Third, this deals with only half of the advice and consent. We have to deal with the pesky little document called the Constitution. This is something you take as a whole. This is very short, but we have to stick with this and advise and consent.

We have failed to recognize we have the future ahead of us, not what went on in the past. I am not here to criticize what went on in the Clinton years. I am not here to condone or criticize what went on in the last 4 years. I am here to look forward.

I say to my friends on the other side of the aisle, any proposal I have made said let's look forward. Let's take this nuclear option off the table, and let's work on these judges we have ahead of us. I can never say there will never be a filibuster because I cannot say that, but I don't think this Senate is in the mood for a number of filibusters. I don't think Members feel like it. We should go forward.

I told my distinguished friend, the Senator from Kentucky, I told my distinguished friend—and I say ''friend'' in the true sense of the word—from Tennessee, if we somehow fail on the good faith, and they think we filibuster too much, talk too much, you always have the next Congress. Let's try to look forward. Let's not look back.

I want to leave here today or tomorrow—whenever we leave—with a good feeling. People get locked in: this is not good enough. I am not going to berate him for this offer he has made. It is an offer. I appreciate that. It is the first offer we have had. I have had one. He has had one. Legislation is the art of compromise.

While this is not truly legislation, it is in keeping with what we do here. We try to build consensus. We try to work toward an end that is satisfactory. I hope we can do that. I hope calmer heads prevail. I say that on my side as well as the other side of the aisle. If we did it right, we would take his suggestion to the Rules Committee, have them come back on it, and we would vote on it here. That is how we change rules.

I had the good fortune—and I say that without hesitation or reservation—to serve for many years on the Ethics Committee. I was chairman; I was vice chair. Senator Bob Smith from New Hampshire and I worked a full year, we worked hard, trying to change the very difficult rules we have in the Ethics Committee, which is part of the Senate Standing Rules. We brought it to the Senate after our staff worked hundreds of hours. Bob Smith and I worked on it many hours. We were rejected. I felt so bad because I personally believe the Senate did the wrong thing. But they did it. We tried to comply with the rules. That is what we should do here. We both tried to make our case to the public. And I will speak for a while this afternoon, not specifically on the leader's proposal but about things in general. In the very worst way, I want to try to work our way through this.

Again, I do not really like the proposal given, but I am not going to throw it away. I am going to work on it and see if I can come back with something that is in keeping with what I think is the ''Mr. Smith Goes to Washington'' scenario. Because I really do believe that even though we are in the minority now—and I have thought about this a lot. I have thought about this. If someday in the future—and it will happen; I hope I am around to be part of that—I became the majority leader, I would not want this rule. I would not want this rule. I do not know if I would have the integrity, intellectual integrity to change it so that you folks could do what I thought was in keeping with the rules. But I have thought about that.

We are not always going to be in the minority here. I believe very seriously that this is something that every party should have. I say to my friends, and everyone within the sound of my voice, test us. Let's see how we can do in the future. I cannot say there will not be any filibusters, but I think we are going to have a much better situation. People are very concerned about the Supreme Court, and they should be. They should be. But let's not direct our attention to changing the Senate rules for fear of something that may never happen.

I repeat, what I would like to do is say there is no nuclear option in this Congress, and then move forward on this. And, as I say, they always have the power. I would like to think that a little miracle would happen and we would pick up five seats this time. I guess miracles never cease. But I say, respectfully, to everyone, I think the Republican Senators would have this power next Congress as they do now.

So I appreciate my friend making this offer. We have so much to do. We have the highway bill to work on today and finish when we come back. We have the budget, we have the supplemental appropriations bill. We need good feelings around here.

As we have indicated, there has been some talk about my closing down the Senate. I have recognized since the Newt Gingrich days that does not work very well. But I do think we would be working as much off our agenda as the majority's agenda—a big clash of heads. We would be talking about things we want to talk about and they want to talk about. I would hope we can get past that and go on to do some real legislative work in the months to come.

I would hope that the legacy I leave and that BILL FRIST leaves is that we had two leaders who, in spite of their tremendous political differences—and we have some different political philosophies—I hope people can look back at us and say: Those are two men who worked very hard to try to get this institution to work.

I am saying this in good faith. I want the other side, in good faith, to trust what we are going to do on the judges in the future. That is all I ask.

Mr. President, I ask unanimous consent that after I suggest the absence of a quorum I then be recognized when the quorum call is called off.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, what is the order now before the Senate?

The PRESIDING OFFICER. The Senator has the right to recognition.

Mr. REID. Mr. President, under the order previously entered, it is my understanding when I have completed my remarks, Senator WYDEN will be recognized. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. REID. Mr. President, I have finished my remarks.

Thank you, Mr. President.

The PRESIDING OFFICER. Under the previous order, the Senator from Oregon is recognized for 10 minutes.

Mr. WYDEN. Thank you very much, Mr. President.

(The remarks of Mr. WYDEN pertaining to the introduction of S. 946 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS—Continued

AMENDMENT NO. 593 TO AMENDMENT NO. 567

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

Mr. THUNE. Mr. President, may I inquire as to the pending business before the Senate?

The PRESIDING OFFICER. The Senate is in morning business.

Mr. THUNE. Mr. President, I have an amendment to offer to the pending bill, H.R. 3, the transportation bill.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 593.

The amendment is as follows:

(Purpose: To retain current levels of State authority over matters relating to preservation, historic, scenic natural environment, and community values)

On page 230, strike lines 6 through 15 and insert ''Section 109 of''.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, the amendment I am offering would remove a substantive grant of authority the U.S. Department of Transportation

will be given under the bill as reported by the Environment and Public Works Committee. The House and Senate have been working for the past 2 years to reauthorize TEA–21. I understand one of the underlying goals has been to improve upon the existing process States must follow from project inception to completion. Many of my colleagues would be amazed to learn that on average it takes 8 years to complete a construction project from inception to its completion. Some Members have told me it takes longer than that.

While I applaud Chairman INHOFE and Ranking Member JEFFORDS for their work to make needed improvements in the transportation process, my State Department of Transportation in South Dakota has brought to my attention a problematic provision they believe will further delay and complicate further transportation projects across the country.

To clarify for my colleagues, section 1605(a) of the underlying bill would grant the Federal Highway Administration the authority to ''ensure'' that a highway facility ''will consider the preservation, historic, scenic, natural environment and community values.''

I have been unable to get anyone to give me a good explanation as to why this particular provision was included in the bill. Currently each of our respective State Departments of Transportation already follows strict Federal rules when it comes to such things as environmental review, historic preservation, and planning requirements. States also have to follow their own State rules regarding these issues. To give an example, this is the book State DOTs have to follow. This pertains to rules and regulations that apply to highway projects. It seems to me to be quite thick already.

The amendment I am offering does nothing to take away from the existing environmental reviews, historic preservation, and planning requirements each transportation project is subject to. Very simply, it removes the prospect that this provision will result in the Federal Government imposing new requirements on top of those already in law or rule, including in the subjective area of ''community values.''

I believe many of my colleagues would agree the best decisions are made by individuals at the State and local levels. If this provision were to be signed into law, I fear States will be told by the Federal Government what their community values are. Even more concerning to me and my department of transportation is the risk that there will be varying interpretations of community values from State to State and regional divisions of the Federal Highway Administration. Our current design, planning, and construction processes are difficult enough as it is.

Unless we remove section 1605(a) from this bill, we will effectively be allowing the Federal Highway Administration to tell our States what their respective community values are. Furthermore, unless we remove this provision, I fear one of the major goals in the reauthorization bill, which is project streamlining, will be unachievable. Moreover, while I certainly heard about this from my own State Department of Transportation, I have received letters from the following groups supporting the removal of section 1605(a) of the bill: AASHTO, the American Association of State Highway and Transportation Officials, has written asking that this provision be removed; AGC, the Associated General Contractors of America; ARTBA, the American Road and Transportation Builders Association; the American Highway Users Alliance; the American Council of Engineering Companies; the Transportation Construction Coalition; and the U.S. Chamber-led Americans for Transportation Mobility Coalition. I will submit for the RECORD some of those letters that have been sent to us with respect to this particular provision of the bill.

I want my colleagues to know what the executive director of AASHTO said in his letter:

> States should have the flexibility to determine how they will work with other state agencies and local communities to address these values rather than having them dictated by the federal government.
>
> NEPA and other environmental laws already provide regulatory oversight. Additional requirements will only burden the project delivery process, which we are tying to streamline.

Mr. President, I ask unanimus consent that those letters I mentioned be printed in the RECORD.

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

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS,

APRIL 26, 2005.

Hon. JAMES INHOFE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR INHOFE: The American Association of State Highway and Transportation Officials (AASHTO) represent the State transportation agencies in the fifty states, the District of Columbia and Puerto Rico. On behalf of our member States, I urge you to maintain the current commitment to simplifying and expediting the highway project delivery process, and to remove Section 1605(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (S. 732) which—contrary to that commitment—would impose additional requirements and standards for each and every highway project.

Specifically, Section 1605(a) of SAFETEA adds language that grants additional authority to the U.S. Department of Transportation to ensure that individual projects on every highway facility are designed to achieve ''preservation, historic, scenic, natural environmental and community values.'' States should have the flexibility to determine how they will work with other state agencies and local communities to address these values rather than have these values dictated by the federal government. In addition, regulatory oversight is already required under the National Environmental Policy Act (NEPA), historic preservation laws and other environmental statutes. Additional requirements will do nothing more than further burden the current project delivery process, which we are trying to streamline.

Sincerely yours,

JOHN HORSLEY,
Executive Director.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,

APRIL 26, 2005.

Hon. DANIEL AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: On behalf of the Associated General Contractors of America (AGC), I am writing to urge you to support a Thune amendment to H.R. 3 that would maintain state and local flexibility over the transportation planning process by striking unnecessary and burdensome requirements contained in Section 1605(a) of the federal highway and transit reauthorization bill.

Section 1605(a) adds language that grants additional authority to the U.S. Department of Transportation to ensure that individual transportation projects are designed to achieve ''preservation, historic, scenic, natural environmental, and community values.'' While environmental and historic impacts are carefully considered when designing transportation improvements, the federal government should not dictate what ''values'' are important to states and localities.

Current planning requirements establish a highly comprehensive process that effectively enables appropriate agencies and the public to have input on transportation decisions in their communities. Proposals to complicate or add to this process will only add to the length of time that it already takes to deliver transportation projects. We believe Section 1605(a) is contrary to the commitment to streamline the transportation project delivery process, which is critical to addressing the nation's transportation needs.

Again, I urge you to support the Thune amendment.

Sincerely,

JEFFREY D. SHOAF,
Senior Executive Director, Government and Public Affairs.

AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION,

APRIL 28, 2005.

Hon. JOHN THUNE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR THUNE: On behalf of the 5,000 members of the American Road & Transportation Builders Association, I write in strong support of your amendment to H.R. 3 to reject a new federal directive to states on what they must consider when attempting to meet their own unique transportation challenges.

One of the key objectives of the Transportation Equity Act for the 21st Century (TEA–21) when it was enacted in 1998 was to shorten the amount of time transportation improvement projects spend in the environmental review and approval process. To accomplish this objective, the measure included provisions to facilitate concurrent reviews by involved federal agencies and consolidated the transportation planning process.

Unfortunately, H.R. 3 injects a number of new planning requirements that states and metropolitan planning organizations (MPOs) must consider in the transportation planning process. Specifically, the measure requires the U.S. Department of Transportation (U.S. DOT) to ensure federally-aided highway improvement projects are designed to meet, among other things, the ''community values'' of an area. In addition, to this objective being entirely subjective and impossible to define, these ''value judgment'' decisions arc best made by transportation planners at the local level—not U.S. DOT officials.

Thank you for your leadership on this amendment to strike the new community

values standard for highway improvement projects. We urge all senators to support the Thune Amendment and all efforts to avoid adding new federal requirements on state and local planning authorities.

Sincerely,

T. PETER RUANE,
President & CEO.

Mr. THUNE. Mr. President, in closing, as I have outlined today on the floor—in addition to the views expressed by the leading transportation groups in the country—it is my hope the bill managers will be able to accept this commonsense amendment to ensure that community values are decided at the State level and not in Washington, DC.

Again, I will close by saying this particular document already provides a tremendous amount of paperwork and regulation and rules that State DOTs and those who participate in Federal projects and highway funding issues have to comply with. It certainly seems to me that to add a nebulous and subjective additional requirement of ''community values,'' one, adds additional paperwork burden and redtape to the process that is already extensive and, secondly, it allows the Federal Government to interfere in an area that ought to be decided at a State and local level.

I hope the managers will accept the amendment. In the event they don't, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? At this time, there is not a sufficient second.

Mr. THUNE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. THUNE. Mr. President, I request the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized for 10 minutes.

THE NUCLEAR OPTION

Mr. REED. Mr. President, I will speak on the issue of the so-called nuclear option.

We are at an important crossroads in our Nation's history today. I believe my Republican colleagues should think long and hard about the long-term effects of what they are proposing on the vitality and utility of this institution that we call the U.S. Senate.

As Thomas Paine once stated:

> He that would make his own liberty secure, must guard even his enemy from opposition; for if he violates this duty, he establishes a precedent that will reach himself.

I believe that this so-called crisis is really an artificial crisis. The Senate has confirmed 206 of President Bush's judicial nominees and rejected 10. The Senate has confirmed 95 percent of the President's nominees. We have the lowest court vacancy rate since the administration of Ronald Reagan.

As almost everyone in this body is aware, President Clinton had over 60 judicial nominees and 200 executive branch nominees blocked by the Republicans. Many of these nominees were not even granted the courtesy of a hearing, let alone a vote. We call this ''pocket filibustering'' in the Senate. It was according to the rules, and we followed the rules and did not attempt to change the rules. That is the difference today. The Republicans are trying, through extralegal means perhaps, to change the rules of the Senate.

Senator FRIST and many of my other Republican colleagues have been involved in both filibustering and pocket filibustering of judicial nominees, and they did not object to their own actions or purport to suggest that their own actions were unconstitutional or in any way violated the spirit or the rules of the Senate.

In 2000, Clinton nominee Richard Paez was filibustered by a number of my colleagues, but Democrats and Republicans defeated the filibuster by finding common ground and, under the rules of the Senate, moved to a vote.

Although almost every Senator in this Chamber believes that bipartisan improvements could and should be made to the nomination process, this President and the majority have not made any such attempts.

For example, returning to the tradition of allowing home State Senators and/or home State advisory boards to make recommendations to the President regarding eminent lawyers and jurists he should consider when nominating men and women for lifetime appointments on Federal courts would be one possible way to make this whole process less partisan.

If we want thoughtful, intelligent men and women to even want to take on the job of Federal judge, we would all benefit from depoliticization of the judicial process.

There are many ways President Bush and the Republicans in the Senate could work with Democrats to make the judicial nomination process work more smoothly. But in light of the rejection of the minority leader's proposal and the subsequent proposal made by the majority leader, it is clear this debate is not really about making the process work better. This whole debate should be seen for what it is—a grab for power.

This is not the first time a President, with the help of his own party, has attempted to grab complete and total power over the judicial nomination process.

In 1937, President Franklin Roosevelt, a Democrat, sent a bill to Congress that would have drastically reorganized the judiciary and added up to six more justices on the Supreme Court. Why? Because he didn't like what the Supreme Court was doing to his legislative proposals. Although the Senate Judiciary Committee rejected the bill, finding it, in their words, ''essential to the continuance of our constitutional democracy that the judiciary be completely independent of both the executive and legislative branches of Government,'' the majority leader, Joseph Robinson, supported the bill and brought it to the floor.

A determined group of Senators, using the filibuster for 8 days, defeated this proposal. It was the right to free and open debate that defeated President Roosevelt's attempt to consolidate his power over the judicial branch of Government. It is that same right we are talking about today. It is the right that allows the Senate to play its unique role in our constitutional democracy.

One of the most basic concepts behind the construction of the Constitution is the concept that absolute power corrupts. After fighting a revolution to escape from the tyranny of an absolute monarch, the Founding Fathers were very focused on coming up with a system of government that would prevent one ruler or one faction of people from controlling all of the mechanisms of power.

James Madison believed that ''the causes of faction cannot be removed and that relief is only to be sought in the means of controlling its effects.''

As he stated in Federalist Paper No. 10: ''Among the numerous advantages promised by a well-constructed union, none deserves to be more accurately developed than its tendency to break and control the violence of factions.'' He further goes on to state that ''Complaints are everywhere heard from our most considerate and virtuous citizens . . . that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.''

It was the desire of the Founding Fathers to protect the rights of the minority from ''the superior force of an interested and overbearing majority'' which caused them to create three branches of Government.

Because of the skills and temperament required of a judge, the Founding Fathers decided that judges would not be elected like the other two branches of Government but would be nominated by the President with the advice and consent of the Senate.

Article II, section 2 states that the President:

> . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law. . . .

In effect, Madison and the Founding Fathers believed that the independence

of the judiciary was so important that lifelong judicial appointments needed to be made by consensus between the executive and legislative branches. Alexander Hamilton stated in Federalist Paper No. 78 that:

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency in the meantime, to occasion dangerous innovations in the government and serious oppressions of the minor party in the community.

Resonating throughout the Federalist Papers is the notion that the test of this Government is not the success of the majority but the fact that minority rights are protected. Minority rights on this floor could be extinguished if the rules of this Senate are disregarded. This is why I am here today on the floor of the Senate to speak out.

It is important that we do not let another President try to pack the courts. The Senate cannot become merely a rubberstamp for any President. The independence of the courts is critical to protecting the Constitution and the rights of individuals. It is for this reason that preserving the right to open and free debate in the Senate is so important. Indeed, if the Founding Fathers wanted a system of pure majority rule, they would have only created one Chamber.

These decisions should not be made on a political whim. The impact of judicial appointments outlasts party changes in both the executive and legislative branch of Government. Indeed, some Members of the other party have complained about the abuse of power by ''activist'' judges. Frankly, I cannot think of a better way to protect against activist judges than by protecting the current cloture rule. If two-thirds of the Senate believes a nominee is qualified for the position and will do the job well, that candidate is probably not going to be an activist judge on either the right or the left.

Opponents of the filibuster have questioned its constitutionality. However, time and again, the courts have shown a reluctance to interpret the rules of either House of Congress or to review the application of such rules.

The Founding Fathers stated in article I, section 5, clause 2 of the Constitution:

Each House may determine the Rules of its Proceedings.

Much of the current debate around the Republican leadership's proposal to change a 200-year-old Senate tradition regarding the right to unlimited debate revolves around rule XXII of the Standing Rules of the Senate. This rule is clearly constitutional. Rule XXII is about the precedence of motions. The relevant part is as follows:

Is it the sense of the Senate that debate shall be brought to a close? And if that question shall be decided in the affirmative by three-fifths of the Senators duly sworn—except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting—then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

This rule encapsulates an agreement between the majority and minority that an amendment to the Senate rules is so important that it requires a two-thirds vote—the same number of votes required to vote on treaties, overcome a Presidential veto, and impeach a President—to change the Standing Rules of the Senate. And beyond all the current maneuvers on the floor, the real goal of the Republican majority is to change the rules of the Senate.

In addition to the filibuster, the Senate has adopted other practices to protect minority rights, including unanimous consent rules, holding legislation or nominations in committee, and the blue-slip process. When some of these procedures, in addition to the filibuster, have been challenged, the courts have given deference to the Senate to make its own rules on how to deliberate.

Clearly, if the majority party is arguing that the filibuster is unconstitutional, then certainly all other methods of blocking a nomination, including never holding a hearing or vote in committee, would be as well.

I daresay the same individuals arguing for the end of the filibuster because it is unconstitutional would not state that they acted unconstitutionally in blocking 60 of President Clinton's judicial nominees.

In fact, the Constitution is notably silent on what advice and consent means on a Presidential nomination. The majority are interpreting this to mean that each nominee deserves a vote, but the Constitution is actually silent on this issue. It is left to the Senate to determine what advice and consent really means.

I think we are well served by the current rule and 200 years of checks and balances, and we should not give up our right to debate without realizing the serious consequences this will have on our institution, not just today but for decades, in fact, the history of this country going forward. Finally, let me talk briefly about the claim that unlimited debate or the filibuster has never been used against a judicial nominee. That is simply untrue. The first recorded instance occurred in 1881 when Republicans were unable to end the filibuster of Stanley Matthews to the Supreme Court. There were nine other occasions in the 19th century when the Senate held no floor votes on Supreme Court nominations. More recently, the nomination of Associate Justice Abe Fortas to be Chief Justice of the Supreme Court and Homer Thornberry to be an Associate Justice failed when they were filibustered on the Senate floor by Republican Senator Robert Griffen and others.

Our predecessors also believed that certain judicial nominations were too problematic to be approved. If we are focused on improving the judicial nomination process right now, there is much we can do together to make it work better. This should be the issue before us today, not taking away the voice of the minority in one of the most important decisions we are asked to make as Senators, protecting the independence of the judiciary.

I also think we should be talking about real crises on the Senate floor, such as a $422 billion deficit, a historic trade deficit, the devastating budget the majority will be presenting to us this afternoon, and the need to stabilize a country in the Middle East that we have been engaged in for more than two years and has cost us American lives and billions of dollars. I urge the majority to reconsider this ill-advised abuse of power and work with us to forge some solutions to these real crises and to maintain the balance and integrity of our democratic institutions.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Colorado is recognized for 10 minutes.

Mr. SALAZAR. Mr. President, I ask unanimous consent that the pending amendments be set aside.

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

AMENDMENT NO. 581 TO AMENDMENT NO. 567

Mr. SALAZAR. Mr. President, I have an amendment at the desk, amendment No. 581, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. SALAZAR] proposes an amendment numbered 581.

Mr. SALAZAR. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the percentage of apportioned funds that may be used to address needs relating to off-system bridges)

In section 144(f)(2)(A) of title 23, United States Code (as amended by section 1807(a)(4)), strike ''15 percent'' and insert ''20 nor more than 35 percent''.

Mr. SALAZAR. Mr. President, before discussing my amendment, allow me to commend the work of Senator JEFFORDS and Senator INHOFE and their staffs for their work on this very important bill for the people of America. It is good work, and it is about the people's business. This is a vitally important bill on a vitally important topic. Without their efforts, we would not be where we are today. I look forward to the day when we can have a transportation bill passed that we can send to the President for his signature, hopefully very soon.

I also wish to say that I am glad we are taking this bill up at this time because the last Congress was not able to

get it through. We are hopeful this time around that we will be able to succeed. This is an issue which I believe is at the top of the concerns of people throughout the country. In my travels throughout the State of Colorado, county commissioners, mayors, and local people tell me time and time again that moving forward with the reauthorization of the Transportation Act is something we should do and we should do as soon as possible.

The amendment that I have proposed addresses a problem that faces many of our States across our country, particularly those States that have many miles of rural roads and bridges. Ensuring that rural areas receive adequate funding to fix the increasing number of structurally deficient bridges in rural America is a priority. I know it is a challenge in Oklahoma, and I know it is a challenge in Vermont.

In my State of Colorado, 17 percent of our bridges are in disrepair, and many of those bridges are in parts of rural Colorado. Currently, the Federal Bridge Program apportions funds to States for the replacement and fixing of bridges, and for over 25 years the program has directed a minimum of 15 percent of those Federal funds to be used on bridges on those State and local roads that do not receive any Federal aid. We call these bridges off-system bridges.

We need to increase the percentage from 15 percent to 20 percent. It is imperative when addressing the needs of transportation infrastructure in Colorado and across America that we ensure there is adequate funding to address the needs of rural America. Let us make clear the scope of this problem. In this country, there are 307,000 on-system bridges; 23 percent of those bridges are structurally deficient or functionally obsolete—23 percent of those bridges are in bad shape.

There are 286,000 off-system bridges. Of those 286,000 off-system bridges, 30 percent are deficient and in need of repair. And consider this, across this great country of America, over 80 percent of bridges are found on non-Federal-aid highways. We must ensure that these bridges in rural communities have the kind of repair to ensure the safety and quality of life for the residents of those communities.

The House version of this Transportation bill has increased the level of funding out of this fund to 20 percent. I agree with the House of Representatives, and I believe along with the National League of Cities, the National Association of Counties, the American Public Works Association, and the National Association of County Engineers that we should do the same thing, and my amendment will do that.

Our roads, our bridges, our transit system, our rail lines, and our ports need assistance to ensure that our Nation has a first-class infrastructure needed to reinvigorate our economy and to make our country strong and competitive.

Senator INHOFE, Senator JEFFORDS, and their staffs have worked to ensure that we have a comprehensive bill that addresses these needs. This small fix improves this bill, and I hope my colleagues will join me in ensuring it passes the Senate and gets to the President.

I will take just a second to address an amendment that we will be voting on shortly, and that is the amendment offered by my colleague from Missouri, which would essentially take away the 2 percent that has been allocated in the portion of these funds to deal with the problem of storm water discharge. That is an issue which is a reality that faces communities across our country.

We have 5,000 communities that will be affected if, in fact, that 2-percent allocation is stripped from this particular legislation. It is important for us to make sure that we are protecting the environment, but it is also important for us to make sure we are supporting the local and State governments that will benefit from the money that is currently included in our version of the bill. Therefore, I urge my colleagues to vote against the amendment that has been offered by our good friend from Missouri.

Keeping this provision that we are talking about in this bill is important to the U.S. Conference of Mayors, the Association of State and Interstate Water Pollution Control Administrators, the Association of Metropolitan Water Agencies, the Association of State Floodplain Managers, the Association of Metropolitan Sewerage Agencies, and others.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I am happy to work with the Senator from Colorado on the needs of his particular State. This measure before us would enable his State to spend more on bridges if that is the need but to require States to spend 5 percent more where in our State for various reasons we only spend a minimum of 15 percent, and other States may be in our same situation, I am very much concerned about a mandate because we have bad bridges, but we kill people on our highways. We kill people on our highways because we have two-lane highways that are carrying heavy truck traffic and passenger traffic that warrant four lanes. Rebuilding bridges is not going to solve that problem. So for our State, this would be a real problem.

As chairman of the subcommittee, I would be happy to work with the Senator to see if we can reach an accommodation, but I am very much concerned about what I think the gist of his amendment is.

I believe the Senator from South Carolina has a brief statement. I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I ask unanimous consent to speak for 3 minutes as in morning business.

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

(The remarks of Mr. DEMINT are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I see my distinguished colleague from Colorado. I believe I was to follow him. Is that the order? I do want to adhere to the order.

The PRESIDING OFFICER. There is no order in effect.

Mr. WARNER. I want to address the amendment of the distinguished Senator from Missouri, Mr. BOND, which is one of several pending amendments. If the Chair so desires, could we ask our colleague from Colorado, is this a matter related to the bill? We need some orientation so that I can accommodate the Senator from Colorado or he can accommodate me, as the case may be.

Mr. SALAZAR. If the distinguished Senator from Virginia would give me 30 seconds, I will make my point.

Mr. WARNER. The Senator is ever so generous. Let's give him a full minute.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. I thank the distinguished Senator from Virginia.

I say this to my distinguished friend from Missouri: I believe the needs of rural America, especially with respect to transportation, are important. I believe having legislation here that would change the percentage allocation by 5 percent, so we could have the rural bridges of our country have more resources to be able to get the job done, is something that is very important. I accept his offer to work with him, and look forward to seeing how we can address the needs of rural America with respect to the rural bridges we have across our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I rise to address the underlying bill which, in markup in the committee on which I am privileged to serve, was a markup of 17 yeas and 1 nay.

I rise in opposition to the Bond amendment. I hasten to point out this body has already disapproved the Bond amendment when they approved the earlier highway bill. This body has acted and approved the current mark that is in the underlying bill, which my good friend from Missouri seeks to strike.

What is this all about? In its simplest form, it is the mayors and the county supervisors and those officials in the State entrusted with the supervision of the construction, modernization, improvements, and renovation of our road system, usually the assistant secretary for transportation or whatever it is designated in the State—it is a whole realm of State officials on one side. I

will call it by one name, the mayors. It is the mayors versus my good friend from Missouri, Mr. BOND. The mayors desperately want to keep intact the bill as written by the committee and keep this provision which helps these individuals deal with a mandate from the Congress of the United States under the Clean Water Act, which says you must, in new construction, and as they rehabilitate the existing road system, deal with storm water runoff. That runoff contributes up to 50 percent of the total storm water which is daily worsening our drinking water. That is a quick synopsis.

Now I would like to go into a somewhat more lengthy dissertation. I express my strongest opposition. I should say I urge colleagues to affirm the markup of the committee. Leave the bill as it is. But to do so, we have to oppose the Bond pending amendment.

The program is urgently needed to fund local governments, the mayors and the supervisors, to reduce the runoff of polluted water. As I say, this was already approved by the Senate when they approved the first highway bill. There is no change of the language in the amendment I put in and incorporated in the markup of the bill. It was included and passed by the Senate last year.

The bill in its present form—and this provision, the Warner amendment, is in the bill—will for the first time begin to address the unfunded mandates affecting our local communities. It helps the mayors and the boards of supervisors and others deal with the unfunded mandate placed upon them with regard to the storm water runoff. I regret that my colleague opposes helping our localities with such serious financial burdens as now imposed on them by the Clean Water Act.

The rest of the story is that the Clean Water Act requires all of our communities to obtain permits for their storm water discharge. Along with this requirement comes the mandate that local governments are to fund projects that will control storm water runoff. These can be very expensive projects. Again, our existing highways are up to 50 percent the contributors to the problem associated with storm water runoff affecting our drinking water and other clean water uses.

Look at this debate we are having now as one regarding public health. What is more important to us than our clean drinking water? It is a matter of public health. Local governments that finance and manage our public drinking water systems tell me and they tell you, every one of you, it is becoming more and more difficult and more expensive to filter and treat our drinking water to remove the pollutants, many of which derive from storm water runoff, particularly from our roads. Stop to think of the contamination that exists on the roads that accumulates over the use of the road. Along comes one of our greatest gifts, a rain shower, and it takes those pollutants and runs them off and they find their way into our drinking water.

Many organizations that are on the front lines dealing with the problem strongly support this very modest provision to begin to address pollution for the existing highway structures. I point out that we have already acted in this body in previous legislation to say all new construction will have set aside by the States as required the funds necessary to deal with the storm water runoff from new construction. This measure very modestly is to take care of the existing road structures—when they need to be repaired at times, when they need to be upgraded.

I will bet I could go to dozens of places in my State, and each of you could go to places in your State, where you have new construction going on over here and it is funded to handle the storm water runoff, and not a mile distant is one of the old roads which doesn't have the precautions, and the runoff from both feeds the same stream which then goes into our water supplies. So unless you correct the old system, what is the sense of trying to correct the new system, in many instances? Stop to think about that. We have already exercised our wisdom to make sure the new construction is adequately financed and this is but a modest provision to finance the existing system.

It is a small provision. It is $170 million a year—$170 million a year out of a $284 billion bill. It will help more than 5,000 local communities in each of our States. Most importantly, our States themselves want this program. The Association of State and Interstate Water Pollution Control Administrators, our State officials responsible for improving the water quality of our rivers and lakes and streams, has written to each of us urging that the Senate retain the markup which was approved—again, 17 to 1 in the committee.

I refer my colleagues to a portion of the letter from the State and Interstate Water Pollution Administrators:

> Communities throughout the Nation, including numerous smaller towns and counties, are required under the Clean Water Act to obtain discharge permits for storm water. Even those communities which have long understood the value of protecting their drinking sources and recreational sources from storm water impacts are hard-pressed to absorb the costs of discharges from the highways. This presents an unfair burden to these small communities, and we believe it is fair for the transportation funding system to help remedy this problem where existing highways and other roads cause significant runoff problems.

Storm water runoff is an $8 billion national problem. Yet there is no financial assistance to help our localities with the existing road structure. The storm water program in this bill takes the first step. I am very proud, indeed humbled, to represent these small communities. I urge my colleagues to let this bill remain as is.

The Association of Metropolitan Sewerage Agencies, representing our municipally owned sewage treatment plants, has joined in this debate.

I ask unanimous consent that several letters I have from the various State organizations be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. WARNER. This organization likewise has written in strong support of the committee's storm water provision. They also cite the undisputed fact that polluted storm water from impervious surfaces such as roads is a leading reason why nearly 40 percent of our Nation's waters fail meeting our Nation's water quality standards.

Similar letters of strong support have come from the U.S. Conference of Mayors which emphasize ''absent some . . . [other Federal funding] storm water pollution cleanup costs, including loadings attributable to the Federal highway system will be borne largely by local taxpayers through property taxes and other general taxes and wastewater utility fees.''

Hear this: These are your mayors reaching out to you for help.

I could go on. I have a great many letters. I am pleased to say our distinguished Governor of Virginia, Mark Warner, states:

> A program such as this could help improve water quality in the Chesapeake Bay, and other watersheds in the Commonwealth.

The Virginia Association of Counties has strongly endorsed this program with the view that these provisions, reserving less than one-third of a penny of every highway dollar, are a very modest commitment to an enormous challenge before local governments struggling with contamination of drinking water from highway/street storm water discharge. The support for the committee's provision is strong because everyone recognizes that storm water runoff from highways is a known impediment to good water quality.

Accordingly, from the Environmental Public Agency, storm water runoff is the leading cause of pollution for nearly half of our rivers, lakes, and streams.

Roads collect pollutants from tailpipe emissions, brake lines, oil, and other sources. During storms, they mix with other contaminants of heavy metals and road salts that wash into our waters, and eventually, regrettably, work their way, in many instances, into our drinking water.

Today, every new highway must include methods to control this runoff. We have already spoken to this issue, spoken to this need, and funded in connection with new construction. I am talking about a very modest amount, one-third penny, to help these existing road systems.

We are here to help our local communities. The mayors have reached out. The chairman of the Board of Supervisors has reached out. Those folks that come to our offices and visit, we slap them on the back, and they leave

that office thinking they are going to get help. This is the kind of help they need. It is not much, one-third of one penny of every highway dollar.

The demands of those who are in opposition to this—namely, the road builders, and I am not speaking disrespectfully—have powerful lobbies, unlimited requirements. This is one-third of one penny for the mayors.

EXHIBIT 1

THE UNITED STATES CONFERENCE OF MAYORS,
Washington, DC., April 25, 2005.

Hon. JAMES M. INHOFE,
Chair, Environment & Public Works, U.S. Senate, Washington, DC.

Hon. JAMES M. JEFFORDS,
Ranking Minority Member, Environment & Public Works Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INHOFE and RANKING MINORITY MEMBER JEFFORDS: On behalf of The United States Conference of Mayors and the hundreds of cities we represent, I write to convey our strong support for the stormwater provisions of your Committee-approved SAFETEA plan to renew the nation's surface transportation programs.

These provisions, reserving less than 1/3 of a penny on every authorized dollar, is a very modest commitment to an enormous challenge before local governments struggling with contamination of drinking water and cleanup of streams, rivers, lakes and ponds and highway and street stormwater discharge, including oil, grease, lead and mercury. Moreover, we have been assured that these provisions limit funding to actual facilities on the federal aid system, which is a critical factor underlying our support of this program. This is important to the nation's cities since it ensures that users of these systems contribute something to the broader efforts under the Clean Water Act to reduce pollutants from the nation's major highways and roads.

Absent some commitment to retrofitting existing facilities on the federal aid system during this renewal period, stormwater pollution cleanup costs, including loadings attributable to the federal aid system will be borne largely by local taxpayers through property taxes, other general taxes and wastewater utility user fees.

Finally, we disagree with the claim that this is a diversion of funds from highway construction and highway capacity needs. It is the belief of the nation's mayors that improved performance, whether it is pavement quality, the deployment of technology, or its stormwater quality features, are priorities for the nation as we work with you to provide a modern and fully functional transportation system for our citizens and their communities and regions.

America's mayors thank you for making these provisions part of your SAFETEA legislation and urge you to preserve this important commitment to stormwater pollution abatement efforts during your conference committee deliberations with the House. If you have any questions, please contact our Assistant Executive Director for Transportation Policy Ron Thaniel.

Sincerely,

TOM COCHRAN,
Executive Director.

ASSOCIATION OF STATE AND INTERSTATE WATER POLLUTION CONTROL ADMINISTRATORS,
Washington, DC, April 22, 2005.

DEAR SENATOR: On behalf of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), I urge your support for the Highway Stormwater Discharge Mitigation Program, Section 1620 of the Senate SAFETEA bill, S. 1072, in the 108th Congress. This new and modest program is designed to address stormwater runoff from the nation's existing transportation system. Stormwater runoff is a significant source of water pollution affecting large and small communities, as well as fish, wildlife and the natural environment.

Stormwater pollution results from paving over naturally porous ground, resulting in impervious surfaces that collect pollutants and increase overland stormwater volume and velocity. Stormwater becomes a direct conduit for pollution into the nation's rivers, lakes, and coastal waters. Studies have shown that roads contribute a large number of pollutants to urban runoff—metals, used motor oil, grease, coolants and antifreeze, spilled gasoline, nutrients from vehicle exhaust, and sediment. For example, the stormwater discharge from one square mile of roads and parking lots can contribute about 20,000 gallons of residual oil per year into the nation's drinking water supplies. Highways can increase the annual volume of stormwater discharges by up to 16 times the pre-development rate and reduce groundwater recharge.

Communities throughout the nation, including many smaller towns and counties, are required under the Clean Water Act to obtain discharge (NPDES) permits for their stormwater. Those communities, which have long understood the value of protecting their drinking water sources and recreational waters from stormwater impacts, are hard-pressed to absorb the costs of discharges from highways in addition to their other stormwater management responsibilities. This presents an unfair burden to these communities and we believe it is fair for the transportation funding system to help remedy this problem where existing highways and other roads cause significant runoff problems.

We urge you to continue to demonstrate your leadership in protecting America's waters by supporting the stormwater mitigation provision in SAFETEA. We appreciate your willingness to consider the views of the State and Interstate Water Pollution Program officials responsible for the protection and enhancement of the nation's water quality resources.

Sincerely,

ARTHUR G. BAGGETT, Jr.
President.

ASSOCIATION OF METROPOLITAN WATER AGENCIES,
Washington, DC, April 22, 2005.

DEAR SENATOR: On behalf of the nation's largest publicly owned drinking water systems, I write today to express support for section 1620 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, (S. 732), which would provide $870 million over five years for stormwater mitigation projects.

This language makes progress toward addressing the billions of dollars in costs that state and local governments will incur to control stormwater generated by our nation's highways.

Stormwater runoff has a significant effect on thousands of miles of the nation's rivers and streams. The bill acknowledges this impact and assists states and local communities in addressing this growing water quality problem.

Thank you for your consideration.

Sincerely,

DIANE VANDE HEI,
Executive Director.

ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES,
April 22, 2005.

Re Support for S. 732 and the Highway Stormwater Discharge Mitigation Program.

Hon. JAMES M. INHOFE,
Chair, Environment and Public Works Committee, U.S. Senate, Washington, DC.

Hon. JAMES M. JEFFORDS,
Ranking Member, Environmental and Public Works Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INHOFE AND SENATOR JEFFORDS: We are writing to express our strong support for the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005 (SAFETEA) (S. 732) *as passed* March 16 by the Senate Environment and Public Works Committee. The Committee's bill includes a provision to authorize $867.6 million over five years for stormwater mitigation projects, using just 2% of the Surface Transportation Program funds. Such projects include stormwater retrofits, the recharge of groundwater, natural filters, stream restoration, minimization of stream bank erosion, innovative technologies, and others.

According to the U.S. Environmental Protection Agency, polluted stormwater from impervious surfaces such as roads is a leading cause of impairment for nearly 40% of U.S. waterways not meeting water quality standards. Roadways produce some of the highest concentrations of pollutants such as phosphorus, suspended solids, bacteria, and heavy metals.

AMSA represents hundreds of publicly owned treatment works, many of which have municipal stormwater management responsibilities. Your continued support for S. 732, including the Highway Stormwater Discharge Mitigation Program, would provide much-needed support to these communities. Thank you for your leadership and please feel free to contact me at 202/833–4653 if AMSA can provide you with additional information.

Sincerely,

KEN KIRK,
Executive Director.

TROUT UNLIMITED,
March 15, 2005.

Re Support of Highway Stormwater Discharge Mitigation Funding in the Transportation Bill.

Hon. JIM INHOFE,
Chairman, Environment and Public Works Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INHOFE: Trout Unlimited, the nation's leading trout and salmon conservation organization, urges you to support funding to mitigate stormwater runoff in this year's transportation bill. A similar provision, Section 1620, the Highway Stormwater Discharge Mitigation Program, was included in last year's Senate transportation bill, S. 1072.

Stormwater runoff is a significant source of pollution for all the nation's waters, and is a major cause of trout and salmon habitat loss. Roads are a major source of stormwater runoff. Road building in the United States has created millions of miles of impervious surfaces that collect water and pollutants. When mixed with rain and melting snow, these pollutants flow unimpeded into nearby streams, undermining water quality and warming water temperatures to the point where trout habitat is damaged. Furthermore, excessive and poorly designed road building through watersheds can turn normal rainstorms into small flash floods that scour stream bottoms and de-stabilize stream banks, leading to poorer quality streams over time.

Congress has recognized that runoff pollution from highways lowers water quality and destroys habitat in receiving waters in previous highway bills (ISTEA and TEA–21), but has not yet succeeded in getting adequate funding directed at curbing this pollution. In 2000, EPA estimated at least $8.3 billion over 20 years in local funding needs to address stormwater requirements. The time to take action is now as you consider the new Highway Bill.

In addition to providing much-needed funding, the bill encourages projects with the least impact on streams and promotes the use of non-structural techniques, such as created wetlands, to mitigate the negative impacts of storm water. These approaches are generally more cost-effective and do more to protect and improve water quality and protect habitat.

Thank you for your support of this important provision in this year's transportation bill.

Sincerely yours,

STEVE MOYER,
Vice President, Government Affairs and Volunteer Operations.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE GOVERNOR,
April 19, 2004.

The Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

DEAR SENATOR WARNER: As always, the Commonwealth deeply appreciates your efforts to improve our environment as well as our transportation system. I am writing to provide my strong support for your amendment to the Senate Surface Transportation Reauthorization Bill that provides for a highway stormwater discharge mitigation program.

A program such as this could help to improve water quality in the Chesapeake Bay, and other watersheds in the Commonwealth. Virginia is prepared to work with you and other states to ensure that these funds can be flexibly managed by VDOT to achieve our shared goal of improving stormwater discharge from existing or future federal-aid highways.

I appreciate your continuing support of the many and varied interests across the Commonwealth. I look forward to furthering these interests through the reauthorization of the Surface Transportation Act.

Sincerely,

MARK R. WARNER.

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX,
Fairfax, Virginia, April 27, 2005.

Senator JOHN W. WARNER,
Washington, DC.

DEAR SENATOR WARNER: I am writing to you in my capacity as the President of the Virginia Association of Counties (VACO) to urge your continued support for the stormwater provisions of your Committee-approved SAFETEA plan to renew the nation's surface transportation programs.

These provisions, reserving less than 1/3 of a penny on every authorized dollar, are a very modest commitment to an enormous challenge before local governments struggling with contamination of drinking water and cleanup of streams, rivers, lakes and ponds from highway and street stormwater discharge, including oil, grease, lead and mercury. Moreover, I have received assurances that these provisions limit funding to actual facilities on the federal aid system, which is a critical factor underlying my support of this program. This is important to the local governments since it ensures that users of these systems contribute something to the broader efforts under the Clean Water Act to reduce pollutants from the nation's major highways and roads.

Absent some commitment to retrofitting existing facilities on the federal aid system during this renewal period, stormwater pollution cleanup costs, including loadings attributable to the federal aid system, will be borne largely by local taxpayers through property taxes, other general taxes and wastewater utility user fees.

As Fairfax County and other localities within the Chesapeake Bay watershed work to limit stormwater runoff and improve the Bay's health, I ask that you and your colleagues show your support for this critical component of SAFETEA. It is vital that environmental mitigation efforts are regarded as an integral feature of a safe and efficient national transportation network.

I appreciate your making these provisions part of your SAFETEA legislation and urge you to preserve this important commitment to stormwater pollution abatement efforts during your conference committee deliberations with the House.

Sincerely,

GERRY CONNOLLY.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, obviously, my good friend, the Senator from Virginia, and I view this very differently. I will outline some of the differences we have.

Let me clarify. The Senator from Virginia noted that the bill passed last year in the Senate with the storm water provision included. I ask my colleagues to recall that we did so only with the agreement that I would not raise it in the Senate in order to get it to conference, and we would address it in conference. I did so out of deference to my colleagues to get the bill off the floor and to conference in what turned out to be the vain hope we could get a conference agreement on the bill which we badly needed last year.

I did not want to hold up progress on the bill last year. We did not have time to debate it fully. But this year, we have time to debate it fully. It is appropriate we do so.

First, let me address the concept that this is a modest amendment, a small amendment.

Back home, $900 million is not a small amount. I live in a State where $900 million means a whole lot. Do you know to whom it means a lot? It means a lot to the mayors. The mayors want safety for their citizens. These are community leaders who come to Washington to talk to me about how badly they need the money for their roads.

I don't think $900 million is small. I don't think we should take $900 million from the highway, bridge, transit construction budget.

But if Senators think their State has more than enough highway dollars and can afford to give money away for storm water, I would be glad to know that as we move forward on appropriations matters and other matters dealing with transportation.

With respect to what this underlying bill will do, section 1620, which was sponsored by the Senator from Virginia, mandates States set aside 2 percent of the funds in their main highway accounts—nearly $900 million total over the life of the bill—to be used only, regardless of need, on storm water mitigation activities.

If allowed to remain in the bill, the mandatory set-aside would force all States to divert $740 million from their Surface Transportation Program funds. The mandatory set-aside would also force States to divert over $125 million from the Equity Bonus Program set up to help almost every State receive more transportation. That is where I get the $900 million figure.

However, if this figure is struck, if the State of Virginia or any other State wants to use it, storm water mitigation activities are already eligible for funding. States can spend up to 20 percent of a project's cost using STP funds on storm water mitigation if they choose. The underlying bill also expanded funding eligibility for storm water mitigation by adding it to the eligible activities. The National Highway System program states they will be able to spend up to 20 percent of a project's costs using NHS on storm water mitigation if they choose.

I have already listed what the impact of the mandatory set-aside would be. The occupant of the chair is from Minnesota. That would be a $17.7 million hit on Minnesota. In addition, the State of Virginia would have to set aside $23 million. But I guess they would want to use that money on storm water anyhow.

Mr. WARNER. Will the Senator yield?

If the Senator is reading from the same statistics, give the full information.

The Senator said to our distinguished Presiding officer of Minnesota that indeed $17 million would be taken out of the asphalt and concrete. But I point to the next column: Your State holds $471 million under the mandate by the EPA for clean water. I have calculated that $17 million is helping, in a very modest way, the obligation of your State for $471 million to meet the mandate put on by the Senate and House of Representatives.

I know, as a former Governor, how you——

Mr. BOND. I would like to respond and finish my presentation. Then we can get into a discussion.

Mr. WARNER. I have always admired the Senator for so many reasons. I really regret to be out here so forcefully taking him on with his arm in a sling.

Mr. BOND. You have no conscience.

Mr. WARNER. No conscience.

I ask you—you are out here accusing me of putting in a mandate—how many

mandates in this bill are you the author of?

For instance, Safe Walks to Schools—hurray. I am all for it. Very good one.

Mr. BOND. I didn't support that.

Mr. WARNER. I beg your pardon?

Mr. BOND. I didn't vote for that. I will address that at some point.

Mr. WARNER. Do you have a question to put to me?

Mr. BOND. I thought I had the floor.

The PRESIDING OFFICER. The Senator from Missouri has the floor.

Mr. WARNER. But I will get it back.

Mr. BOND. All good things come to an end. I appreciate the comments. I was going to address the need for clean water, but my good friend from Virginia is saying we need to make this into a water bill. He said we need to fund local water projects for Governors.

I thought this was a transportation bill. I have already pointed out that the States can use up to 20 percent of STP in the national highway funds on storm water mitigation. But there are lots of unfunded mandates that this body has put, in the past, on our local governments to clean up local water.

Do you know something. For the last dozen years, I have fought as chairman of the VA–HUD Appropriations subcommittee, with my colleague and very good friend, Senator MIKULSKI of Maryland, to provide the funds we need to try to help States and local governments meet their obligations.

There is something called the State revolving funds, and every year the Office of Management and Budget—it does not matter whether it is a Republican or Democrat—cuts it. Those are the most important funds we can provide. We put in over $2 billion each year. It gets cut. We put it back in the next year to go into the State revolving funds. Senator MIKULSKI and I have funded hundreds and hundreds of millions of dollars of water cleanup projects in various States—including Virginia, I am proud to say, a State of which I am very fond—and helping them deal with their clean water needs.

This is a transportation bill. I hear a lot from mayors and local government officials. They need transportation. There are waters needs, yes, but these water needs are about $200 billion—$200 to $250 billion—and unfunded. We could take the entire transportation budget, dump it into water, and still not meet the needs.

He has talked about how important safe drinking water is for health. And I agree. Really, it is one of the best environmental investments we could make. But when you are talking about public health, let's talk about the slaughter on the highways. The whole purpose of this bill is called SAFETEA. The administration says, and I believe, we need to make our highways safer. We kill three people a day or more on Missouri highways. Over 365 of those people die every year because our highways are inadequate. We have narrow two-lane roads that really should be divided four-lane highways, and people get killed on them. Jobs do not come to town when we do not have adequate roads. We contribute to pollution when we tie up traffic on these roads. We need to put these dollars to work.

As I said, the good Senator from Virginia mentioned the mayors support it. Well, my mayors support money for highways and bridges and transportation. But I can tell you, the States strongly support my amendment. They do not want their hands tied by a new Federal mandate. We have too many mandates in this bill, and I would be willing to take a look at some of the others.

But the State departments of transportation want and need the flexibility to spend their own highway dollars. That is why the organization of State highway directors, AASHTO, said: ''We need your immediate help.'' They absolutely want the help of every person in this body to support the Bond amendment to strike section 1620. They say:

> Section 1620 mandates that States set-aside 2%. . . . This will divert $867 million from a core program that provides funding for highway, bridge and transit construction, rehabilitation and repair. If this provision is removed, any State can continue to spend up to 20% of a project's cost on storm water activities—but at the discretion of the State.

So here we are asking this body to be, again, a ''daddy knows best.'' We are going to tell States they have to spend $900 million—which is not much in ''Washington speak,'' but it is an awful lot in my ''home State speak''—for storm waters.

I have already submitted the letters of support. Let me give you some more of the organizations, in addition to AASHTO: the United Brotherhood of Carpenters and Joiners of America, Laborers-International Union of North America, the International Union of Operating Engineers, the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, the American Society of Civil Engineers, the American Council of Engineering Companies—and the list goes on. These people understand how badly we need these highway dollars. Anybody who thinks the $284 billion that we were able to get to bring this bill to the floor is adequate has not gone home and listened to the people.

Mr. INHOFE. Will the Senator yield?

Mr. BOND. I am happy to yield.

Mr. INHOFE. This has been a very good debate and lively debate, and you both adequately confused me. I think that we should maybe draw this to an end. In a moment I would like to make a unanimous consent request that would limit the debate on the amendment. I have been checking with you individually. So I ask I be recognized at the conclusion of the Senator's remarks and any remarks the Senator from Virginia may have for that request.

Mr. WARNER. Mr. President, I certainly have no objection. How might we best accommodate the managers of the bill? A few more minutes on my side, a few more minutes I presume from my colleague, and we would be—

Mr. INHOFE. I was going to propound a UC that you have 3 additional minutes, the Senator from Missouri has 3 additional minutes, and Senator JEFFORDS 2 additional minutes, if that is all right.

Mr. BOND. Do you want 2?

Mr. INHOFE. No, I don't want 2. I already had my 2.

Mr. BOND. Go ahead, please.

Mr. INHOFE. Thank you. So if there is no objection—

Mr. WARNER. Reserving the right to object, I wonder if you would ask that I be recognized at the conclusion of the debate for purposes of making a tabling motion.

The PRESIDING OFFICER. Is there objection?

Mr. INHOFE. Let me go ahead and put this in order, then.

ORDER OF PROCEDURE

Mr. President, I ask unanimous consent that there be 8 minutes remaining for debate prior to a vote in relation to the Bond amendment No. 592, with Senator WARNER in control of 3 minutes, Senator BOND in control of 3 minutes, Senator JEFFORDS in control of 2 minutes, and that Senator WARNER would be recognized to make a tabling motion; provided further, that following that debate, the Senate proceed to a vote in relation to the amendment, with no amendment in order to the amendment prior to the vote—

Mr. WARNER. Mr. President, the purpose of my recognition is to move to table. Is that clearly understood?

Mr. BOND. Yes.

Mr. INHOFE. Yes, it is clearly understood. Let me finish here.

Further, that following that vote, the Senate proceed to executive session for the consideration en bloc of Calendar No. 67, Calendar No. 68; further, that there then be 30 minutes equally divided between the chairman and ranking member or their designees; provided further, that following that debate the Senate return to legislative session and the votes occur on the confirmation of the two nominations at a time determined by the majority leader, after consultation with the Democrat leader, and that following those votes the President be notified of the Senate's action, and the Senate resume legislative session.

The PRESIDING OFFICER. Objection was heard to unanimous consent request.

Is there objection?

Mr. WARNER. No. I withdraw any objection. I thank the Presiding Officer. And I just might add by way of courtesy to the Senators, they can expect a rollcall vote within the next 10 minutes or so. Would that not be correct?

Mr. INHOFE. That would be correct.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Missouri.

Mr. BOND. To conclude my opening comments, I would note that the administration, in its statement of policy, says: The inclusion of a mandatory 2-percent set-aside from the STP program to support a highway storm water mitigation program is opposed. Storm water discharge mitigation costs are already eligible under STP.

I very much appreciate the assistance of the chairman of the committee, Senator INHOFE, who supports my amendment and spoke eloquently earlier on it.

Mr. President, I reserve the remainder of my time and now turn the floor over to——

Mr. WARNER. Mr. President, will the Senator yield for a question?

You have just advised the Senate that the administration has taken a position. I wish to add, is that the current AP or the one that was given last year?

Mr. BOND. April 26, 2005.

Mr. WARNER. Fine.

Mr. BOND. You may find it at the top of page 2.

Mr. WARNER. I accept the proffer.

Mr. President, while the Senator is on his feet, I say to the Senator, you say that this mandate is going to take some money from the bill. I have added up a number of mandates that our committee has put into this bill which are funded out of highways. Two of them, I commend you for. One is the NHS connecters—that is connecting some of our local systems to the interstate—which are valid. That is $900 million. Safe roads and paths to schools—that is a mandate. I commend you for that. That is $312 million. And Railroad diversion of highway funds, $893 million. It goes on and on.

I have to tell you, I think this is a well-crafted bill. It has my support. The chairman knows that. But, please, do not point the finger to me as if I am the only one who put a mandate in to help the little fellows. They are in here, plenty of them.

Thank you for your smile. That is all I wish to say. You agree with me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise in opposition to the Bond amendment.

This section provides much-needed assistance to our States and local communities to deal with the impacts of highway storm water discharges.

I urge my colleagues to continue their support for this vital program which the full Senate adopted in the 108th Congress.

My colleague from Missouri argues that this provision takes money away from State highway departments.

That is not the case.

This provision simply ensures that of the funds provided to State highway departments, an extremely small percentage, 2 percent, will be spent on storm water problems caused by Federal aid highways.

Who will benefit?

Local communities will benefit. That is why the U.S. Conference of Mayors is opposed to the Bond amendment.

Without the funds set aside by the storm water program in the highway bill, local communities will be left holding the bill for compliance with storm water regulations in areas where Federal aid highways contribute to storm water pollution.

Our Nation's wildlife will benefit.

One of this section's greatest supporters is Trout Unlimited.

They recognize that storm water runoff presents a huge risk to fish populations all across the Nation.

Other groups opposed to the Bond amendment include the League of Conservation Voters.

A vote against the Bond amendment is a vote for clean water.

A vote against the Bond amendment is a vote for local communities.

I urge my colleagues to oppose the Bond amendment.

I yield the remainder of my time to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wish to point out that as Senators come down to vote, I will put this sheet down for their examination. It shows the current allocation of aggregate Surface Transportation Program funds to their respective States, followed by a column which indicates the amount of money that the current markup with the Warner provision in it takes for the storm water. And then in the right-hand column is what their States owe under the EPA mandate to clean up water.

You will find that I offset by just a small percentage the enormous obligation each Senator's State has with regard to the EPA-mandated cleanup of the water.

I thank the Chair and thank my colleagues for a very good debate. I hope we have fairly and adequately framed it for all Senators.

I move to table Bond amendment No. 592, and I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Missouri has 2 minutes remaining.

Mr. WARNER. I will withhold.

Mr. BOND. Mr. President, I thank my colleagues.

This particular mandate of the good Senator from Virginia is one that I don't like. He put in another mandate to increase funding for metropolitan planning organizations. If we could pass a Clear Skies bill, we wouldn't need to waste all that time on planning activities because we would clean up our air with a heavy restriction on utilities. That is a debate for another time. But just because there are too many mandates in this bill already does not justify keeping $900 million in State budgets out of transportation needs and putting it into storm water.

Don't forget, as we have said, the States now can spend up to 20 percent of their STP and the National Highway System money on storm water cleanups. Granted, there are tremendous needs for cleaning up the water, wastewater and drinking water. We need to address those. I wish we could address them more generously in the water cleanup bills. But this is taking money away from the lifeblood of transportation lifesaving highway construction that we need in our States.

Our mayors—in Missouri, the ones I have talked to—and community leaders are very strongly in favor of it. I guess the good Senator and I will have dueling charts showing how much money is set aside from the State budgets. We know the amounts set aside in the State budgets pale by comparison to the water needs, but the needs for highways go far beyond that in our States. I strongly urge my colleagues to oppose the motion to table because we need better, safer transportation to meet the goals of SAFETEA.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I simply wish to reply that the amendment that is in the bill provides jobs. The same construction worker who is on the project building the new road comes down and repairs the old road. It requires concrete and asphalt to repair the old road, to divert the water. So it is highway construction. It is jobs. There is no digression of the funds except to provide a safety measure.

Mr. BOND. Mr. President, all of the labor organizations, the State highway officials, all of the groups that provide those funds strongly support my amendment and would oppose the motion to table of the Senator from Virginia.

Mr. WARNER. Mr. President, those organizations have been misinformed.

I move to table the Bond amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 113 Leg.]

YEAS—51

Akaka	Durbin	McCain
Alexander	Ensign	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Bennett	Harkin	Nelson (NE)
Biden	Hatch	Obama
Bingaman	Inouye	Pryor
Boxer	Jeffords	Reed
Cantwell	Johnson	Reid
Carper	Kennedy	Rockefeller
Chafee	Kerry	Salazar
Clinton	Kohl	Sarbanes
Coleman	Lautenberg	Schumer
Corzine	Leahy	Smith
Dayton	Levin	Stabenow
Dodd	Lieberman	Warner
Dorgan	Lincoln	Wyden

NAYS—49

Allard	DeWine	McConnell
Allen	Dole	Murkowski
Bond	Domenici	Roberts
Brownback	Enzi	Santorum
Bunning	Frist	Sessions
Burns	Graham	Shelby
Burr	Grassley	Snowe
Byrd	Gregg	Specter
Chambliss	Hagel	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Collins	Isakson	Thomas
Conrad	Kyl	Thune
Cornyn	Landrieu	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	
DeMint	Martinez	

The motion was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 593

Mr. GREGG. Mr. President, I ask unanimous consent that Senators THOMAS and JOHNSON be added as cosponsors of Thune amendment No. 593.

I further ask unanimous consent that the yeas and nays previously ordered on the amendment be vitiated and that the amendment be adopted.

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

The amendment (No. 593) was agreed to.

AMENDMENT NO. 594 TO AMENDMENT NO. 567

Mr. GREGG. Mr. President, I ask unanimous consent that the amendment at the desk submitted by Senator ISAKSON be considered; provided further that the amendment be agreed to, and the motion to reconsider be laid upon the table.

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

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for Mr. ISAKSON, proposes an amendment numbered 594 to amendment No. 567.

Mr. GREGG. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment (No. 594) was agreed to as follows:

(Purpose: To require the Secretary of Transportation to approve a certain construction project in the State of Georgia, provide for the reservation of Federal funds for the project, and clarify that the project meets certain requirements)

At the end of subtitle H of title I, add the following:

SEC. 18___. APPROVAL AND FUNDING FOR CERTAIN CONSTRUCTION PROJECTS.

(a) IN GENERAL.—Not later than 30 days after the date of receipt by the Secretary of a construction authorization request from the State of Georgia, Department of Transportation for project STP–189–1(15)CT 3 in Gwinnett County, Georgia, the Secretary shall—

(1) approve the project; and

(2) reserve such Federal funds available to the Secretary as are necessary for the project.

(b) CONFORMITY DETERMINATION.—

(1) IN GENERAL.—Approval, funding, and implementation of the project referred to in subsection (a) shall not be subject to the requirements of part 93 of title 40, Code of Federal Regulations (or successor regulations).

(2) REGIONAL EMISSIONS.—Notwithstanding paragraph (1), all subsequent regional emissions analysis required by section 93.118 or 93.119 of title 40, Code of Federal Regulations (or successor regulations), shall include the project.

N O T I C E

Incomplete record of Senate proceedings.

Today's Senate proceedings will be continued in Book II.