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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty and everlasting God, today we praise Your name for the gift of life. We could not have awakened this morning without Your power. Yet so often we take our breath and heartbeats for granted.

Forgive us when we lose our awe for the miracle of life and fail to do our part to protect and sustain it. Give us wisdom to take care of the temples of our bodies and may our souls prosper as we experience physical well-being.

Lord, strengthen our Senators today. Keep them open to a growing faith and a maturing set of convictions. Help them to do with faithfulness that which lies to their hands, so that they may finish their race with joy.

Make each of us willing to pay the price for freedom.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 11, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BROWNBACK thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning after 60 minutes of morning business we will resume debate on the highway bill. As I announced on several occasions, this is the second week for consideration of the bill. It is our hope to complete work this week.

Last night, cloture motions were filed to the substitute and the bill in an effort to bring the bill to conclusion this week. Today, we will make additional progress on the bill prior to those cloture votes, which will occur on Thursday. If cloture is invoked, there could be up to 30 hours remaining for consideration of the pending substitute amendment. Therefore, Senators should have ample time for debate and amendments. I hope we will not use all of the time and we could finish the bill at the earliest possible point in time.

We expect a busy session for the remainder of the week as we continue to make progress on the highway bill.

MIDDLE EAST VISIT—WEST BANK

Mr. FRIST. Mr. President, over the recess last week, I had the opportunity to travel to Israel, the West Bank, Jordan, Lebanon, and Egypt. Yesterday, I reported on the Israel leg of my fact-finding mission. Today I will continue briefly with that discussion of some of my observations of the West Bank.

It was an invaluable experience. I and my entire group learned a tremendous amount about the Palestinian perspective. Following my meetings in Jerusalem, we made our way to Ramallah in the West Bank to meet with the leadership of the Palestinian Authority. As we drove toward the city, we could see from our windows that everyday life for Palestinians in the West Bank is, indeed, a struggle. We had to pass through multiple checkpoints, predominantly through the security barrier, the so-called fence, much of which is newly constructed.

As I learned on my visit to the Middle East, the fence has been, in truth, very successful in preventing terrorist attacks, although it was quite remarkable that you had to stop and be checked out before passing this fence, which sometimes you had to cross multiple times.

We could also see the toll the Intifada has taken on the lives of the Palestinian people. Streets were pockmarked, buildings were run down, and a pall hung over the landscape itself. It is clear the Palestinians need one thing; that is, hope—hope for the future, hope for a better life, hope for a more secure life. They need their economic services improved. They need their social services improved. They need to believe there will be tangible benefits from choosing dialog over violence.

This view was reinforced during my meeting with Palestinian Finance Minister Salam Fayyad. I learned from him that the unemployment rate in the West Bank is officially 27 percent, but it far exceeds that number. The people are suffering. That is why I strongly support President Bush's efforts to increase assistance to the Palestinian

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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people. President Bush has pledged to help improve economic support programs and strengthen Palestinian democratic institutions.

The Finance Minister and I discussed President Bush's generous proposal to provide assistance to the Palestinian Authority. The Finance Minister agrees this assistance is crucial as President Abbas seeks to strengthen the mandate he earned in the January Palestinian elections.

From the Finance Minister's office we went on to the Presidential compound in Ramallah to meet with President Mahmoud Abbas. The meeting was constructive. The parties on all sides appear to appreciate the importance of a longstanding and meaningful dialog on ways to bring peace and security to the Middle East. We had a very open and candid discussion about the status of the peace process, the Palestinians' obligations under the roadmap, and the need for both sides to establish greater trust. In particular, we talked of the need to coordinate the Israeli withdrawal from the Gaza Strip so that the Palestinian Authority can reestablish a strong presence in that territory. This whole concept of coordination seemed and is so critical to that successful disengagement.

It is crucial that after that withdrawal the Palestinian Authority is able to strengthen its democratic institutions and maintain security and maintain law and order.

We discussed Israel's withdrawal from the Gaza Strip. I believe that is a courageous decision on the part of the Israelis. President Abbas expressed his concern over unilateral Israeli measures, stressing that progress toward peace should be made through dialog, bringing people together through negotiation and through coordination.

To that end, President Abbas expressed his commitment to dismantling the terrorist organizations and preventing terrorist attacks against Israel. This came up again and again. He conveyed to me his firm belief that nonviolence is the path to a Palestinian State.

In our discussions it was evident that President Abbas is a serious leader, an elected leader, but also a leader who is in a very difficult situation. His election victory gave him a strong mandate to depart from his predecessor's legacy, Arafat's legacy, of violence and terrorism. But he must also compete for that popular support with violent factions such as Hamas that continue to reject peace with Israel, and at the same time they garner support among the people by providing social services to the people. That is what President Abbas faces.

I strongly believe it is, therefore, necessary that the United States continue to support President Abbas in his efforts to transform the Palestinian Authority's reputation for cronyism, corruption, and nontransparency. We need to actively help his administration reform and strengthen the Palestinian security and improve economic services. We must continue to support both economic and social services and offer a stable and peaceful alternative to the radicals that reject peace.

We also had the opportunity to talk with an independent Presidential candidate who lost in the election but garnered significant support—a physician, Dr. Mustafa Barghuti, who ran as an independent in the Presidential elections 5 months ago. He spoke of a need for a strong, viable, independent party to serve as an alternative to Hamas. Like President Abbas, he believes peace is the only path to an independent Palestinian State.

Dr. Barghuti took me on a tour of his medical relief prevention and diagnostic center for cardiovascular disease in Ramallah. It was quite impressive. It is a model he developed as a physician that he hopes, with the appropriate resources, he will be able to spread through the West Bank. We share that common bond of being physicians and had a great dialog on the importance of social services provided through health care to further build that support of this new government.

My experience in the West Bank in my meetings with the various leaders of the Palestinian Authority bolstered my belief that President Abbas is a genuine partner for peace in the Middle East. I also witnessed firsthand how the conflict has deeply affected the daily lives and routines of many Palestinians.

I take this opportunity to urge my colleagues to support President Abbas in his efforts to improve the lives of the Palestinian people and make their governing institutions more accountable and responsible to all. I am hopeful his nonviolent approach to relations with Israel will eventually lead to a viable, independent Palestinian State that is able to live side by side with Israel in peace and security for both.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, with the first half of the time under the control of the Democratic leader or his designee, and the last half of the time under the control of the majority leader or his designee.

The ACTING PRESIDENT pro tempore. The Senator from the great State of Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself such time as I might use on the Democratic side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NUCLEAR OPTION AND ABUSE OF POWER

Mr. KENNEDY. Mr. President, from its beginnings, America has stood for fairness, opportunity and justice. Generation after generation our Nation has been able, often with intense debates, to give greater meaning to these values in the lives of more and more of our citizens. We know today we are a better Nation when our democracy and our policies reflect these values. We are a stronger America when our actions respect those values for all our citizens especially those who are the backbone of America those—who work hard every day, who care for their families, and who love their country.

Fairness; opportunity; justice.

But what we have seen in recent years is a breach of these values in order to reward the powerful at the expense of average Americans.

Those in power passed massive tax breaks for the wealthy and shortchanged everyone else.

They granted sweetheart deals to Halliburton Corporation in Iraq while our troops went without armor.

They let the polluters write the pollution rules for our water and our air.

They let the oil industry write the energy policy in secret meetings in the White House.

Two weeks ago, over the opposition of every Democrat in the House and Senate, they forced through a Federal budget that preserves corporate tax loopholes at the expense of college aid, and slashes Medicaid for poor mothers to pay for tax breaks for millionaires.

They twisted arms for 3½ hours in the dead of night on the floor of the House to pass by a single vote a so-called Medicare reform that lavishes billions of dollars on HMOs and drug companies at the expense of senior citizens and the disabled.

They broke the ethics rules of the House of Representatives, then changed the rules to avoid investigation.

They want to break the promise of Social Security to our citizens by privatizing it, handing it over to Wall Street, and cutting benefits for middle-income Americans.

Their actions are a setback for the cause of fairness, opportunity and justice for all.

Now, Republican leaders want to break the Senate to get their way this time with the Nation's courts.

It's not as if the Senate has failed to confirm President Bush's nominations to the Federal courts. So far, we have approved 208 of his appointments and declined to approve only 10. We have blocked only the very, very few who are so far out of the mainstream that they have no place in our Federal judiciary. And yes, we have been willing to filibuster those nominees to protect America from their extremism.

Yet, Republican leaders now propose to scuttle the very Senate rules that have protected our constitution and our citizens for more than two centuries in a no-holds-barred crusade to

give rightwing activist judges lifetime appointments to the Nation's courts.

They want to break the rules to put judges on our courts who are friendly to polluters and hostile to clean water and clean air.

They want to break the rules to put judges on the courts who are hostile to civil rights, hostile to disability rights, hostile to women's rights, and hostile to workers' rights.

They even want to break the rules to put judges on the bench who condone torture.

The Nation's Founders understood that those in power might believe that the rules most Americans live by don't apply to them. That is why they put in place a democracy that preserves our rights and freedoms through checks and balances. These checks and balances protect our mainstream values by preventing one party from arrogantly and unilaterally imposing its extreme views on the Nation.

The Constitution grants the President a check on Congress by allowing him to veto any measure that he believes crosses the line.

It establishes an independent judiciary of judges with lifetime appointments and irreducible salaries, so they will be immune to political pressures and can serve as a valuable check against illegal or unconstitutional actions by the President or Congress.

It gives the President and the Senate the shared duty of appointing qualified men and women to the courts, as a check against a President who tries to force his will on the courts.

The Founders deliberately designed the Senate to be a special additional check. It is smaller than the House. It has 6 year terms compared to 2 years for the House, and 4 for the President. Our terms are staggered, so that at least two-thirds of us are veterans of a previous Congress. We have unique powers over treaties, appointments, and impeachments. We have full power over our own rules, so that we can be more deliberate and deliberative in our action. The Senate was meant to check an overreaching Executive—or an overreaching House as well, and to resist the fads of public opinion. Over the centuries, we have repeatedly played this balancing and stabilizing role, especially when the independence of the judiciary was threatened by an overreaching Chief Executive.

Thomas Jefferson, at the peak of his popularity and with his party controlling Congress, pushed the Senate to remove a Supreme Court Justice whose decisions Jefferson disagreed with, but the Senate said ''no.''

Franklin Roosevelt tried to expand the Supreme Court, so that he could pack it with Justices who would support his views. Again, a Senate—a Senate under his party's control—said ''no.''

Richard Nixon, having lost one Supreme Court nomination battle to a bipartisan coalition, dared us to reject a second, even worse candidate. But a bipartisan Senate majority honored the Founders' trust by saying ''no.''

Throughout our history, the Senate, has structured its processes to reflect the unique powers entrusted to it. For such irreversible steps as conferring lifetime judicial authority on nominees for the bench, it has given the minority the ability to protect our republic from the combined tyranny of a willful executive branch and an equally willful and like-minded small majority of Senators. Thus the Senate's rules have allowed the minority to make itself heard as long as necessary to stimulate debate and compromise, and even to prevent actions that would undermine the balance of powers, or that a minority of Senators strongly oppose on principle. Especially with respect to appointments, as to which the Senate's ''advice and consent'' is a matter of constitutional prerogative, there has never been a constitutional right, or even a right under the Senate rules, to a floor vote on a nomination that would allow a bare majority to automatically rubberstamp the President's choice.

In fact, until 1917, the Senate had no limit on debate at all, and during that time countless nominees, including judges, not only failed to receive Senate consent, but failed to receive the up or down vote that some pretend has been available as a matter of right.

The cloture rule adopted in 1917 permitted debate to be ended on legislation if two-thirds of the Senate voted to do so, but that rule did not apply to Senate proceedings on nominations. In 1949, the rule was extended to all issues, including nominations. Still, there was no ''right to an up-or-down vote on the floor'' on a matter, because there remained many different ways to prevent it from ever reaching the floor.

In 1975, the two-thirds rule for cloture was reduced to three-fifths, but there was no change in the basic rule: the only floor vote you have ''a right to'' is a floor vote on cloture, and if you lose that vote, the matter does not go forward unless a later cloture vote succeeds or until the opponents are prepared to vote. That has been the consistent practice since the first cloture rule 88 years ago. Everyone knows that is the rule. It has been followed without exception in every Senate since then. We can argue—and most of us have—whether cloture should or should not be invoked on a particular matter. But if the majority is not large enough to win a cloture vote, it cannot move ahead to a final vote on that matter, including a nomination. That is what the rules say. That is what they have always said. And that rule has never been broken, especially when the issue is changing the Senate rules themselves, which still requires a two-thirds majority for cloture.

Just 19 years after the cloture rule was extended to nominations, Republicans in the Senate led a filibuster against a Supreme Court nomination, the nomination by President Johnson of Abe Fortas to be Chief Justice. The Senate Historian describes it accurately on the Senate website: ''October 1, 1968: Filibuster Derails Supreme Court Appointment.''

Some have tried to rewrite the history of that filibuster. But three of us know what happened in 1968 because we were Senators then. President Johnson was one of the best vote counters in our history. If you want to hear a master at work, just listen to his detailed discussion of Senate and House votes on President Johnson's tapes. Lyndon Johnson would not have sent the Fortas nomination to the Senate if he was not completely confident that a majority of the Senate would support the nomination. And in fact those of us who favored the nomination believed he had that support.

The Judiciary Committee reported the Fortas nomination favorably, but its Republican opponents, knowing that they still lacked the votes to defeat the nomination outright, launched a filibuster on the floor, attacking the nominee on a number of different fronts, in an effort to draw away his supporters. In the end, cloture failed, and President Johnson withdrew the nomination.

We may never know what the final vote would have been if there had been no filibuster. But there can be no doubt that what occurred was a filibuster of a Supreme Court nomination, and that the purpose of that Republican-led filibuster was to prevent an up-or-down vote on the nomination. Even though there may have been a majority in support of the nomination when the process started, under the Senate rules at that time there was no way for the majority to cut off the minority's right to continue debate unless two-thirds of the Senate voted to do so. As that cloture vote made clear, there would never be a floor vote on the nomination, unless its opponents ended their filibuster.

In fact the Senate has never allowed a bare majority to silence the minority on any bill or treaty or nomination, least of all on judicial nominees, whom the Framers were determined to keep independent, and whose independence was assured by the Senate's joint role in their appointment. The idea that we should relinquish any part of our power over judicial appointments, while leaving that power intact for nonjudicial nominations and for all legislation, is not only irrational, it is bizarrely backward.

Certainly, this is no time to reduce the ability of the Senate as a whole, and of individual Senators, to assure judicial independence. We need independent courts more than ever. We know that activist groups and their supporters in Congress are putting heavy and well-organized pressure on the courts. They want to restrict rights and liberties in the name of national security. They want to subordinate individual interests to powerful economic interests. They want to intrude

Government into sacrosanct areas of family and religion. They want to reverse longstanding precedents that allow the Nation to realize its full potential.

When one political party controls all the levers of power in both the White House and Congress, and that party feels beholden to a narrow ideological portion of its base, the independence of the courts is more vital than ever. Despite its razor-thin victory in the all-important political campaign last year, following its especially narrow victory in the election in 2000, which was decided by a 5 to 4 vote in the Supreme Court, the Republican party evidently believes it has absolute power. House Republicans yield to the White House, bending House rules to the breaking point to give the President his way. The President has personally picked the majority leader of the Senate and through him seeks to impose unprecedented strict party discipline on Republican Senators.

Now, in a trial run for doing the same to the Supreme Court, the President wants to pack key appellate courts with activist ideological judges he knows could not possibly command a bipartisan consensus in the Senate. It is clear from their records and their resumes that they have been selected precisely because the most radical forces on the Republican right believe they will advance their ideological agenda on the bench.

In these circumstances, we as Senators have not only the right, but the obligation, to use every power at our disposal, within the Senate's rules and traditions, to focus the attention of the Senate and the Nation, and ultimately the President, on the overreaching abuse of power by the White House and the Republican majority. That is what our Senate powers and our Senate rules are meant to do. That is what checks and balances are all about. That is why the filibuster exists.

The Republican argument to the contrary is irrational, incomprehensible and hypocritical. They say that if we dare to use the well-established Senate rules to preserve the independence of the courts, then they are entitled to break the Senate rules to stop us. They assert—and this is the keystone of their argument—that we are abusing the filibuster by actually using it, even on a very few nominations. They seem to say it is permissible to filibuster if you already have a majority of Senators with you; that is, if you don't need to filibuster. But it is not permissible to filibuster if you are in the minority, which is, of course, the only time you need to filibuster. They say you are permitted to filibuster if you don't have the votes to prevent cloture, but are not permitted to do so if you do have the votes to prevent cloture. In short, their argument seems to be that you are allowed to filibuster only when you don't need it or can't make it stick. In a word, their argument is absurd.

The fact is, the Republicans showed in 1968 how the filibuster can be used to change minds when you don't start with enough votes, whether it is Senators' minds, citizens' minds, or just the President's mind.

During the Bush years, the filibuster has been used as an exceptional tool against a small number of judicial nominations—10 out of 218—in contrast to nearly 70 judicial nominations blocked from a floor vote by other Republican tactics during the Clinton administration.

But here is the most important reason the Republican arguments make no sense: It is the President, not the Senate, who determines how often the filibuster is used.

Whenever President Bush decides he would rather pick a fight than pick a judge, then he is likely to be creating the need to filibuster. There is no need for a filibuster if the President takes the ''advice'' of the Senate seriously, under the ''advice and consent'' clause of the constitution, when he nominates lifetime judges for important courts. President Clinton did so with Senator HATCH, the Republican chairman of the Senate Judiciary Committee at the time, on his nominations of Justice Ginsburg and Justice Breyer in the 1990s, and other Presidents have done so throughout history.

Those who do not like the filibuster should take their complaints to the other end of Pennsylvania Avenue, where the real responsibility lies.

The claim that filibustering judges is unconstitutional is without a shred of support in the Constitution or in history. The Republican leadership seems to be on the verge of abandoning that claim. The recent compromise suggested by Senator FRIST would allow the practice to continue for legislation, and for all Cabinet and other executive branch appointments, and even for lifetime Federal district judges. None of these categories is constitutionally distinguishable from Federal appellate court nominations and Supreme Court nominations under the Senate rules. If anything, Article III lifetime appellate judges deserve the filibuster's extra insulation from Executive abuse even more than short-term Cabinet and diplomatic appointments, let alone legislative actions that can be reversed by future legislation.

In short, neither the Constitution, nor Senate Rules, nor Senate precedents, nor American history, provide any justification for selectively nullifying the use of the filibuster.

Equally important, neither the Constitution nor the rules nor the precedents nor history provide any permissible means for a bare majority of the Senate to take that radical step without breaking or ignoring clear provisions of applicable Senate Rules and unquestioned precedents.

Here are some of the rules and precedents that the executive will have to ask its allies in the Senate to break or ignore, in order to turn the Senate into a rubber stamp for nominations:

First, they will have to see that the Vice President himself is presiding over the Senate, so that no real Senator needs to endure the embarrassment of publicly violating the Senate's rules and precedents and overriding the Senate parliamentarian, the way our presiding officer will have to do.

Next, they will have to break Paragraph 1 of Rule V, which requires 1 day's specific written notice if a Senator intends to try to suspend or change any rule.

Then they will have to break paragraph 2 of Rule V, which provides that the Senate rules remain in force from Congress to Congress, unless they are changed in accordance with the existing rules.

Then they will have to break paragraph 2 of Rule XXII, which requires a motion signed by 16 Senators, a 2-day wait and a three-fifths vote to close debate on the nomination itself.

They will also have to break Rule XXII's requirement of a petition, a wait, and a two-thirds vote to stop debate on a rules change.

Then, since they pretend to be proceeding on a constitutional basis, they will have to break the invariable rule of practice that constitutional issues must not be decided by the presiding Officer but must be referred by the Presiding officer to the entire Senate for full debate and decision.

Throughout the process they will have to ignore, or intentionally give incorrect answers to, proper parliamentary inquiries which, if answered in good faith and in accordance with the expert advice of the parliamentarian, would make clear that they are breaking the rules.

Eventually, when their repeated rule-breaking is called into question, they will blatantly, and in dire violation of the norms and mutuality of the Senate, try to ignore the minority leader and other Senators who are seeking recognition to make lawful motions or pose legitimate inquiries or make proper objections.

By this time, all pretense of comity, all sense of mutual respect and fairness, all of the normal courtesies that allow the Senate to proceed expeditiously on any business at all will have been destroyed by the preemptive Republican nuclear strike on the Senate floor.

To accomplish their goal of using a bare majority vote to escape the rule requiring 60 votes to cut off debate, those participating in this charade will, even before the vote, already have terminated the normal functioning of the Senate. They will have broken the Senate compact of comity, and will have launched a preemptive nuclear war. The battle begins when the perpetrators openly, intentionally and repeatedly, break clear rules and precedents of the Senate, refuse to follow the advice of the Parliamentarian, and commit the unpardonable sin of refusing to recognize the minority leader.

Their hollow defenses to all these points demonstrate the weakness of

their case: They claim, ''We are only breaking the rules with respect to judicial nominations; we promise not to do so on other nominations or on legislation.'' No one seriously believes that. Having used the nuclear option to salvage a handful of activist judges, they will not hesitate to use it to salvage some bill vital to the credit card industry, or the oil industry or the pharmaceutical industry, or Wall Street, or any other special interest. In other words, the Senate majority will always be able to get its way, and the Senate our Founders created will no longer exist. It will be an echo chamber to the House, where the tyranny of the majority is so rampant today.

Our Republican colleagues also claim that ''Senate Democrats have previously used majority votes to change the rules'', so they can do it too. That spurious claim depends entirely on a pseudo-scholarly article by two Republican staffers, who happen, unintentionally, to have provided enough facts to rebut the claim. As Senator BYRD and other experts on the rules have shown, the instances they rely on do not involve breaking the rules or changing the rules. They were narrow and minor interpretations to fill gaps in existing rules, but always consistent with the underlying rules and their purposes, and always in keeping with the regular procedures of the Senate. They never allowed debate on any nomination or bill to be cut off without the required cloture vote. The Nuclear Option, in contrast, involves major changes in the essence of key rules, without following the required procedures for changing the rules. In fact, even at the start of a new Congress, the one time when some of us thought the rules might be changed by a majority, the Senate has repeatedly and explicitly rejected the proposition that the rules can be changed without following the rules.

Why would our Republican colleagues try to do this? The simplest answer is that they will do it because they think they can get away with it. If enough Republicans accede to this raw exercise of unbridled power, and ignore the rules and traditions and comity and history and purpose of the Senate, and think they can pull it off and not be held accountable, then they will try it.

Obviously, their party is also being driven by an irresponsible fringe force that does not care about the credibility of their party or the institutional interests of the Senate or the future of our checks and balances form of government. They were the ones who compelled their leaders on both sides of the Hill to intrude in the tragic case of Terri Schiavo. The overwhelmingly hostile reaction to that fiasco should be enough to encourage the White House not to go down such paths again, especially after Stanley Birch, a conservative appointee of the first President Bush, on a conservative federal circuit court of appeals, excoriated Congress for its unconstitutional interference with the courts, and particularly excoriated Republican opponents of judicial activism for hypocritically pushing their own corrosive brand of judicial activism.

Sadly, with Dr. Frist's encouragement and support, the same rabble rousers recently accused us of blocking nominees because they are ''people of faith,'' thus suggesting that the 208 judges whom we have not blocked are not ''people of faith.'' Clearly these activist ideologues do not agree with the Founders about the need for judicial independence, for the separation of powers, or for the separation of church and state. They have no respect for history, no respect for checks and balances, and no respect for the role of the Senate. They simply want as many judges as possible who will follow their instructions.

Fortunately, the vast majority of Americans' share our commitment to basic fairness. They agree that there must be fair rules, that we should not unilaterally abandon or break those rules in the middle of the game, and that we should protect the minority's rights in the Senate.

Even in the darkest days of the government's failure to respond to the civil rights revolution, half a century ago, the Senate never tried to allow a bare majority to silence a substantial minority. Yet that is exactly what Republicans want to do now. There simply is no crisis which justifies such a drastic and destructive action.

Who are the nominees the Republican leadership wants confirmed so desperately that they are willing to resort to tactics like these? Obviously, they are doing it in anticipation of the battle soon to come over the nomination of the next Supreme Court Justice. The judges nominated so far who have been filibustered by the Senate show how truly appalling a Supreme Court nominee may be, if the President can avoid a filibuster.

President Bush has said he wants judges who will follow the law, not try to re-write it. But his actions tell a different story. The contested nominees have records that make clear they would push the agenda of a narrow far-right fringe, rather than protect rights important to all Americans.

Priscilla Owen, Janice Rogers Brown, William Myers, Terrence Boyle, and William Pryor would erase much of the country's hard-fought progress toward equality and opportunity. Their values—favoring big business over the needs of families, destroying environmental protections, and turning back the clock on civil rights—are not mainstream values.

As a Texas Supreme Court Justice, Priscilla Owen has shown clear hostility to fundamental rights, particularly on issues of major importance to workers, consumers, victims of discrimination, and women. Neither the facts, nor the law, nor established legal precedents, stop her from reaching her desired result.

Owen was elected to the Texas Supreme Court with donations from Enron and other big companies. She consistently rules against employees, and consumers who challenge corporate abuses. She bent the law in an attempt to deny relief for the family of a teenager, who was paralyzed after being thrown through the sun roof of the family car in an accident. She wanted to reverse a jury award for a woman whose insurance company wrongly denied her claim for coverage of heart surgery. She argued that the Texas Supreme Court should reinterpret a key civil rights law to make it harder for victims of discrimination to get relief.

It's not just Senate Democrats who question Justice Owen's record of judicial activism and her willingness to ignore the law. Even many newspapers that endorsed her campaign for the Texas Supreme Court now oppose her confirmation after seeing how poorly she served as a judge. The Houston Chronicle wrote that Justice Owen ''too often contorts rulings to conform to her particular conservative outlook.'' The paper also noted that ''It's saying something that Owen is a regular dissenter on a Texas Supreme Court made up mostly of other conservative Republicans.''

The Austin American-Statesman wrote that she ''seems all too willing to bend the law to fit her views.'' The San Antonio Express-News opposed her nomination, reminding us that ''[w]hen a nominee has demonstrated a propensity to spin the law to fit philosophical beliefs, it is the Senate's right—and duty—to reject that nominee.''

Her own colleagues on the conservative Texas Supreme Court have repeatedly accused her of the same thing. They clearly state that Justice Owen puts her own views above the law, even when the law is crystal clear. Justice Owen's former colleague on the Texas Supreme Court, our new Attorney General Alberto Gonzales, has said she was guilty of ''an unconscionable act of judicial activism.'' Some claim that Attorney General Gonzales didn't mean this criticism. But this was no single, stray remark. To the contrary, both he and her other colleagues on the Texas Supreme Court have repeatedly noted that she ignores the law to reach her desired result.

In one case, Justice Gonzales held that Texas law clearly required manufacturers to be responsible when retailers sell their defective products. He wrote that Justice Owen's dissenting opinion would ''judicially amend the statute'' to let the manufacturers off the hook.

In a case in 2000, Justice Gonzales, joined by a majority of the Texas Supreme Court, upheld a jury award holding that the Texas Department of Transportation and the local transit authority were responsible for a deadly auto accident. They said that the result was required by the ''plain meaning'' of Texas law. Justice Owen dissented, claiming that Texas should be

immune from these suits. Justice Gonzales again stated that her view misread the law, which he said was ''clear and unequivocal.''

In another case, Justice Gonzales joined a majority opinion that criticized Justice Owen for ''disregarding the procedural limitations in the statute,'' and ''taking a position even more extreme'' than was argued by the defendant in the case.

In another case in 2000, private landowners tried to use a Texas law to exempt themselves from local environmental regulations. The court's majority ruled that the law was an unconstitutional delegation of legislative authority to private individuals. Justice Owen dissented, claiming that the majority's opinion ''strikes a severe blow to private property rights.'' Justice Gonzales joined a majority opinion criticizing Justice Owen's view, stating that most of her opinion was ''nothing more than inflammatory rhetoric which merits no response.''

In another case, Justice Owen joined a partial dissent that would have limited the right to jury trials. The dissent was criticized by the other judges as a ''judicial sleight of hand'' to bypass the constraints of the Texas Constitution.

For the very important D.C. Circuit, the President has nominated another extreme right-wing candidate. Janice Rogers Brown's record on the California Supreme Court makes clear that—like Priscilla Owen—she's a judicial activist who will roll back basic rights. When she joined the California Supreme Court, the California State Bar Judicial Nominees Evaluation Commission had rated her ''not qualified,'' and ''insensitive to established legal precedent'' when she served on the state court of appeals.

All Americans, wherever they live, should be concerned about such a nomination to this vital court, which interprets federal laws that protect our civil liberties, workers' safety, and our ability to breathe clean air and drink clean water in their communities. Only the D.C. Circuit can review the national air quality standards under the Clean Air Act and national drinking water standards under the Safe Drinking Water Act. This court also hears the lion's share of cases involving rights of employees under the Occupational Safety and Health Act and the National Labor Relations Act.

Yet Janice Rogers Brown's record shows a deep hostility to civil rights, to workers' rights, to consumer protection, and to a wide variety of governmental actions in many other areas—the very issues that predominate in the D.C. Circuit.

Perhaps most disturbing is the contempt she has repeatedly expressed for the very idea of democratic self-government. She has stated that ''where government moves in, community retreats [and] civil society disintegrates.'' She has said that government leads to ''families under siege, war in the streets.'' In her view, ''when government advances . . . freedom is imperiled [and] civilization itself jeopardized.''

She has criticized the New Deal, which gave us Social Security, the minimum wage, and fair labor laws. She's questioned whether age discrimination laws benefit the public interest. She's even said that ''Today's senior citizens blithely cannibalize their grandchildren because they have a right to get as much 'free' stuff as the political system will permit them to extract.'' No one with these views should be confirmed to the Federal court and certainly not to the Federal court most responsible for cases affecting government action. It's no wonder that an organization seeking to dismantle Social Security is running ads supporting her nomination to the second most powerful court in the country.

Janice Rogers Brown has also written opinions that would undermine civil rights. She has held, for example, that the First Amendment prevents courts from granting injunctions against racial slurs in the workplace, even when those slurs are so pervasive that they create a hostile work environment in violation of Federal job discrimination laws. In other opinions, she has argued against allowing victims of age and race discrimination to obtain relief in state courts, or to obtain damages from administrative agencies for their pain and suffering. She has rejected binding precedent on the constitutional limits on an employer's ability to require employees to submit to drug tests.

President Bush has selected William Myers for the important Ninth Circuit Court of Appeals. Mr. Myers is a longtime mining and cattle industry lobbyist. He has compared Federal laws protecting the environment to ''the tyrannical actions of King George'' over the American colonies. He has denounced our environmental laws as ''regulatory excesses.'' In the Interior Department, he served his corporate clients instead of the public interest. As Solicitor of Interior, he tried to give public land worth millions of dollars to corporate interests. He issued an opinion clearing the way for mining on land sacred to Native Americans, without consulting the tribes affected by his decision although he took the time to meet personally with the mining company that stood to profit from his opinion.

William Myers is a particularly inappropriate choice for the Ninth Circuit, which contains many of America's most precious natural resources and national parks, including the Grand Canyon and Yosemite National Park, and which is home to many Native American tribes. The Ninth Circuit decides many of the most important environmental disputes affecting America's natural heritage. It has a special role in safeguarding the cultural and religious heritage of the first Americans. It deserves an impartial judge who will deal fairly with environmental claims, not a mining company lobbyist clearly opposed to environmental protections. The Ninth Circuit needs judges who will respect Native American rights, not a judge the head of the National Congress of American Indians has called the ''worst possible choice'' for Native Americans.

The nomination of Terrence Boyle is still pending in the Judiciary Committee. By all appearances, he was chosen for his radical views, not his qualifications. His decisions as a trial judge have been reversed or criticized on appeal more than 150 times, far more than any other district judge nominated to a circuit court by President Bush. The Supreme Court unanimously reversed him in a voting rights case, in which Justice Clarence Thomas wrote that he had ignored established legal standards.

In fact, he has made serious mistakes in cases that matter most to Americans' daily lives. Time and again, the conservative Fourth Circuit has ruled that Judge Boyle improperly dismissed cases asking protection for individual rights, such as the right to free speech, or the right of free association, or the right to be free from discrimination, or the right to a fair and lawful sentence in a criminal case. It's no wonder that his nomination is opposed by a broad coalition of organizations nationally and in his home state of North Carolina representing law enforcement officers, workers, and victims of discrimination.

Last, but by no means least disturbing, the President has renominated William Pryor to the Court of Appeals for the Eleventh Circuit. Mr. Pryor is no true ''conservative.'' He has pushed a radical agenda contrary to much of the Supreme Court's jurisprudence over the last forty years, and at odds with important precedents that have made our country a fairer nation.

Mr. Pryor has fought aggressively to undermine the power of Congress to protect civil rights and individual rights. He's tried to cut back on the Family and Medical Leave Act, the Americans with Disabilities Act, and the Clean Water Act. He's been contemptuously dismissive of claims of racial bias in the application of the death penalty. He's relentlessly advocated its use, even for persons with mental retardation. He's even ridiculed the current Supreme Court justices, calling them ''nine octogenarian lawyers who happen to sit on the Supreme Court.'' He can't even get his facts right. Only two of the nine justices are 80 years old or older.

Mr. Pryor has criticized Section 5 of the Voting Rights Act, which helps ensure that all Americans can vote, regardless of their race or ethnic background. He's even called the Voting Rights Act, which has been repeatedly upheld by the Supreme Court, ''an affront to federalism.'' His hostility to voting rights belongs in another era—

not on a federal court. As Alabama's Attorney General, in a case involving a disabled man forced to crawl up the courthouse stairs to reach the courtroom, Mr. Pryor argued that the disabled have no fundamental right to attend their own public court proceedings. His nomination was rushed through the Committee despite serious questions about his ethics and even his candor before the Committee.

History will judge us harshly in the Senate if we don't stand tall against the brazen abuses of power demonstrated by these nominees. The issues at stake in these nominations go well beyond partisan division. The basic values of our society—whether we will continue to be committed to fairness and opportunity and justice for all—are at issue.

Many well-qualified, fair-minded nominees could be quickly confirmed if the Bush administration would give up its right-wing litmus test. Why, when there are so many qualified Republican attorneys, would the President choose nominees whose records raise so much doubt about whether they will follow the law? Why force an all-out battle over a few right-wing nominees, when the nation has so many more pressing problems, such as national security, the economy, education, and health care?

Our distinguished former colleagues, Republican Senator David Durenberger and Democratic Senator and Vice President Walter Mondale, recently urged the Senate to reject the nuclear option. They reminded us that ''Our federal courts are one of the few places left where issues are heard and rationally debated and decided under the law.''

Five words they used said it all—''let's keep it that way.'' To reach the goals important to the American people, let's reject the nuclear option, and respect the checks and balances that have served the Senate and the nation so well for so long.

The PRESIDING OFFICER. The time of the minority has expired.

The Senator from Nevada.

FILIBUSTER OF JUDICIAL NOMINEES

Mr. ENSIGN. Mr. President, I would like to think that if some of the finest and most respected jurists in our country's history were nominated today to sit on the Federal bench, their successful confirmation by the Senate would be guaranteed. I am talking about jurists such as Chief Justice John Marshall, Chief Justice Earl Warren, and Justice Oliver Wendell Holmes. Imagine where we would be today without their bright, insightful legal minds.

Unfortunately, in today's bitter and partisan atmosphere, I don't see how any of them would make it through this grueling, humiliating, and endless judicial nomination process. That is a disturbing thought. We must put an end to this mockery of our system before it becomes impossible to undo the damage.

I am sure a lot of Americans believe this is politics as usual. It is not. Filibustering of judicial nominations is an unprecedented intrusion into the longstanding practice of the Senate's approval of judges.

We have a constitutional obligation of advise and consent when it comes to judicial nominees. While there has always been debate about nominees, the filibuster has never been used in partisan fashion to block an up-or-down vote on someone who has the support of a majority of the Senate.

In our history, many nominees have come before us who have generated strenuous debate. Robert Bork and Clarence Thomas are two of what the other side would consider more controversial figures to be considered for a position on the Federal bench. It is important to note that both of these men, despite the strong feelings they generated from their supporters and their detractors, received an up-or-down vote. Now, sadly, due to the efforts of the Democrats in the Senate, the 214-year tradition of giving each Federal candidate for judge a solid ''yea'' or ''nay'' is at risk.

Senate tradition is not the only thing at risk here, though. The quality of our judiciary is at grave risk. It is and should continue to be an honor to be nominated to serve on the Federal bench. Nominees are aware of the rigorous process that goes along with their nomination—intense background checks and the opening of one's life history to the public. However, highly qualified and respected nominees do not sign on to being dragged through a bitter political battle. If we allow the filibustering of nominees to continue, I fear that those highly qualified candidates will decline to put themselves and their families through the abyss of this process. The American judicial system will be sorely hurt should this happen. And it already happened with Miguel Estrada, who was an outstanding nominee. We cannot afford to let this happen and let it continue.

I believe that anyone who has been nominated by the President and is willing to put his or her name forward and be subjected to the rigorous confirmation process deserves a straight up-or-down vote on his or her nomination in both committee and on the floor of the Senate. Guaranteeing that every judicial nominee receives an up-or-down vote is truly a matter of fairness. It doesn't mean that there is no debate or opportunity to disagree. It does mean fair consideration, debate, and a decision in a process that moves forward.

I say that today with the Republican President in the White House and a Republican majority in the Senate, but I know we will uphold the up-or-down vote when we eventually have Democrats back in control. That is because this is the fairest way to maintain the health of the judicial nomination process and the quality of our courts.

Our Founding Fathers set up a form of Government with three separate branches, and they were all very distinct. The current state of affairs in the Senate threatens the very balance of power. Although the up-or-down vote is critical to maintaining that balance, there is a need to reform the committee process as well. Each committee should discharge nominees, whether it is with a positive or a negative vote. But at some point, that nominee deserves to have a vote of the full Senate on the floor. The committee should not have the power to kill a nominee on its own.

I sincerely hope we can put an end to this crisis, judge judicial nominees on the basis of their character, qualifications, and experience, and return to fulfilling our constitutional duty.

I understand that the majority leader has just put forward a proposal to correct the unfair treatment of judges. Senator FRIST's proposal will ensure that each and every nominee will be treated fairly. It will ensure that each nominee will receive a fair up-or-down vote, whether a Republican President or a Democrat President nominates him or her.

I commend Senator FRIST for his leadership. His proposal ensures future nominees are treated fairly. I urge my colleagues to adopt Senator FRIST's proposal.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. VITTER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAPO. 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. CRAPO. Mr. President, I would like to take a few moments to discuss the issue that seems to be the major topic of debate now in the Senate. It is that of the question of how we approach the nomination and confirmation of judges.

Frankly, I think that the level of hostility and the level of debate that has increased around this issue is becoming alarming to the American people—not so much necessarily because of their objection or concern about the various positions being taken but because of the concern about how the Senate is running, the question of whether we in the Senate are working on the business of the American people in a way that is in the best interest of public discourse, or whether the dynamic in the Senate is deteriorating into a highly partisan, highly personal, and highly difficult climate in which we are increasingly facing gridlock.

Mr. President, I would like to go back through the debate because a lot has been said about what the role of the filibuster is as we approach the issue of confirmation of judges. I believe it is important because, frankly, I notice in some of the advertising that

is going on across the country right now that the argument being made seems to be that the filibuster was established in the Constitution by our Founding Fathers as one of the checks and balances of our system.

The reality is that from 1789 until 1806, the Senate did not have anything close to a filibuster. In fact, the Senate had the traditional motion for the previous question in its rules, which, for those who don't follow these things closely, meant that a majority could close debate on any issue when there was a motion to proceed to a vote. The majority could close the debate.

So, clearly, there is no mention of the filibuster in the Constitution and, clearly, until at least 1806 there was no possibility for utilization of the filibuster in the Senate. Even after 1806, when for other reasons the Senate eliminated the motion for the previous question, the idea of filibustering never really took hold in the Senate until much later. In fact, it was about the 1840s when a group of Senators realized that under the rules there was no way for them to be stopped from debating, and they basically started the idea of filibustering and approaching the management of issues in the Senate by utilization of the tool of filibustering—namely, refusing to stop debating and let the Senate move on to a vote.

Even though that practice started in the 1840s, it was used very sparingly and over the years really wasn't that big of a problem. When Senators tried it, they worked out issues they were raising, and issues were resolved. The Senate never really adopted a cloture rule until the 1917 timeframe. The cloture rule, for those who don't follow Senate procedure that closely, is the rule by which the Senate tries to stop a filibuster. It has been in different forms over the years, but in its current form—since 1917, it has evolved—it requires 60 votes in the Senate to adopt cloture, which means that we will then go into a process which will eventually wind down debate on a bill and move us to a point where we can vote on a matter. So even in 1917, when the original cloture rule was adopted, it didn't really mention judicial nominations, because at that point the Senate didn't really contemplate the use of the filibuster on judicial nominations.

The cloture rule was rewritten in 1949. At that time, it was expanded to include all matters which technically included judicial nominations. But even after 1949, filibusters were rarely, if ever, even tried on judicial nominations; and when they were tried on judicial nominations, with one exception, when both parties supported the filibuster, even when filibusters were tried on judicial nominations, they were stopped. Never, until this last Congress, the Congress previous to this, with that one exception I mentioned when both parties supported it, did the Senate support the utilization of a filibuster on the nomination of a judge.

In the last couple of years, we have seen an increasing and frequent utilization of filibusters for nominations on the judiciary. That is what brought us to this battle right now. The question the Senate is grappling with and which the American people, I believe, are justifiably very concerned about is, What should the role of the Senate be? What should the procedure of the Senate be when considering judicial nominations?

That takes us, in my opinion, back to the U.S. Constitution. In article II of the U.S. Constitution, which is the core around which this debate should focus, it provides that the President shall nominate and, by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court and all other officers of the United States, which includes judges of the other courts. The President shall nominate and, by and with the advice and consent of the Senate, shall appoint. So the question there is, Does the Constitution absolutely prohibit a filibuster? No. Does the Constitution absolutely authorize filibusters? No. The Constitution simply says the President shall nominate and, by and with the advice and consent of the Senate, he shall appoint judges.

Our job now is to determine how to run the rules of the Senate in the closest accommodation to the spirit of the Constitution of the United States.

The question, as I see it, is, Does the Constitution contemplate that the President is entitled to a vote on his nominees? And if so, is that vote a majority vote or is it a vote of a supermajority, like 60, or two-thirds? It has been argued on the floor today that all the Constitution contemplates is some kind of a vote, whether it be a 60-vote supermajority, a two-thirds vote, or a majority vote, that the Senate can decide, but all the Constitution contemplates is some kind of a vote.

I disagree. I believe the Constitution contemplated that by a majority vote the Senate would give its advice and consent. I believe the best way to operate this Senate is to utilize the principle of advice and consent as one in which we should give the President an up-or-down vote on those nominees who are able to get sufficient support to get out of the Judiciary Committee to the floor of the Senate. As I say, historically, never, until the last Congress, has the Senate operated in any other way.

There are those who have tried filibusters, but never have just 41 Senators stood solidly together and said: No, we will not allow a nominee who has enough majority support to get to the floor of the Senate to have a vote.

There are those who are saying the President is trying to pack the Court and that the President is trying to change the dynamics of the judiciary with people who are out of the mainstream. Again, I do not believe anything could be further from the truth.

There has been a lot of debate on this floor over the last few weeks about these nominees, but let's look at a couple of these nominees to see what it is we are talking about.

One of the filibustered nominees is Justice Priscilla Owen. She has served on the Texas Supreme Court since 1995. In 2000, Justice Owen was overwhelmingly reelected to a second term on that court, receiving 84 percent of the public vote. I do not think that is out of the mainstream.

During her 2000 election bid, every major newspaper in Texas endorsed her. Before joining the supreme court, she was a partner with a well-respected Texas law firm, having practiced law for 17 years.

Justice Owen has significant bipartisan support in Texas, including three former Democratic judges on the Texas Supreme Court and a bipartisan group of 15 past presidents of the State bar of Texas.

Whether one agrees or disagrees with her philosophy, one cannot argue that she is not mainstream. In fact, a bipartisan group of 15 former presidents of the State bar of Texas—that bipartisan group about which I talked—states:

> Although we profess different party affiliations and span the spectrum of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate to appointment to the Fifth Circuit [Court of Appeals].

They go on to say she has all the qualities to be a good independent judge.

Another who is being attacked is the Honorable Janice Rogers Brown, a nominee from the Supreme Court of California to be on the District of Columbia Circuit Court. In her 9 years on the California Supreme Court, Justice Brown has earned the reputation of being a brilliant and a fair justice who rules on the law.

Her nomination has received broad support from across the political spectrum, and she also stood for reelection in the California judicial system where she received 76 percent of the public vote in California the last time she was on the ballot, which belies the notion that she could be out of the mainstream.

She has dedicated over 25 years of her legal career to public service and she, too, is supported by a broad array of bipartisan jurists and legal scholars in her State.

Let me talk about one more, a nominee from my State, the State of Idaho, William Myers, who has been nominated to the Ninth Circuit Court of Appeals. Bill Myers is a former Solicitor of the Department of Interior and is a highly respected attorney who has extensive experience in the fields of natural resources, public lands, and environmental law. He actually was confirmed by this Senate by unanimous consent when he was confirmed to serve as Solicitor of the Department of Interior.

Before coming to the Department of Interior, he practiced at one of the most respected law firms in the Rocky Mountain region, and he has a rich history of service in public offices. He is a

very avid outdoorsman and conservationist and has himself wide support from bipartisan interests. In fact, the former Democratic Governor of Idaho, Cecil Andrus, indicated he is one who deserves our support, has the integrity, judicial temperament, and experience to be a good judge.

Former Democratic Wyoming Governor Mike Sullivan, who also served as U.S. Ambassador to Ireland under the Clinton administration, endorsed Mr. Myers, saying he is ''a thoughtful, well-grounded attorney who has reflected by his career achievements a commitment to excellence.''

My point in reviewing these three candidates, because my time is limited today, is to show that although there is an argument that the President is trying to submit candidates who are not in the mainstream, the argument does not fit the facts. What is happening is President Bush is being denied the opportunity for even a vote on his nominees to be the judges on the various circuit courts of this country.

I think we ought to come back to the Constitution and to the initial question which I pose: What does the Constitution of the United States contemplate in terms of how the Senate should operate when it fills its role as providing advice and consent in the nomination and appointment of judges?

I think it is very important to note that what we are debating is not the elimination of the filibuster. We have an Executive Calendar and a legislative calendar in the Senate, and the proposal is to address the manner in which filibusters are utilized only on a portion of the Executive calendar. The Executive calendar is that part of our business in which the Senate deals under the Constitution with the executive business of the President with the Senate.

We are suggesting our rules should contemplate that when the Constitution gives the President business to conduct with the Senate and says the Senate should give its advice and consent on the President's nominations, the Senate's rules should not prohibit the President from getting a vote.

All we are asking, not that these nominations be all unanimously approved or automatically accepted, is the President get a vote up or down on his nominees.

It is my hope we will not have to get to the point where on the Senate floor we have a protracted and bitter battle. We have an opportunity to discuss these matters among ourselves and try to do what the American people expect of us, and that is to bring more comity to the Senate in our individual relations among each other.

I believe there is room for finding a compromise that can resolve this issue in a way that will bring dignity and respect to the Senate and will enable us to fulfill the spirit of what the Constitution contemplates when it says the Senate should provide its advice and consent to the nominations of the President.

Mr. President, I thank you for my time, and I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, how much time remains in morning business on this side?

The PRESIDING OFFICER. There is 6 minutes 25 seconds remaining.

Mr. BROWNBACK. Mr. President, I yield myself such of that time as I may consume.

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

Mr. BROWNBACK. Mr. President, I am going to follow on the presentation of my colleague from Idaho on the issue of judges because it is the pending issue before the Senate. We are on the highway bill, and it is important legislation, but this issue is what has captured the attention of this body, the executive branch, and people across the country: the problem of getting judges approved.

My colleague from Idaho well portrayed some of the nominees and what is taking place. I will point out a couple of common issues. I serve on the Judiciary Committee. We have had these individuals in front of us, in some cases, for 4 years. They are well known to this body, to the people here, and they have been fully vetted. The reason they are at this point in getting through is they are extremely well qualified. There may be philosophical differences with them, but if they are allowed to have a vote, they will be confirmed because they are well qualified. If they were not well qualified, if they were outside of the mainstream of judicial thought, they would not be confirmed and we would not be debating this issue.

We have the Democratic Party deciding: OK, we are going to stop them. Actually, they are well qualified and we cannot stop them on a majority vote; we are going to stop them on a filibuster and require a supermajority vote.

They have taken that tactic. It is unprecedented. They have taken that tactic which is within the rules of the Senate.

I want to point out what is going to happen if they persist in that tactic because then they put it back on us or the President to take action in response.

We can say we are not going to do anything, we are just going to let an unprecedented filibuster take over, to which a lot of us are saying that is not right, that is not our job. This may force the President to do a whole group of recess appointments, a right he has under the Constitution. He has been waiting for 4 years for some of these nominees. He would rather not do that, I am sure. I have not talked with him, but I am sure he would rather not do that. He can say: If you are not going to let my judges through, you are supposed to give advice and consent, and if you are not going to give advice and consent, then this is the action I have to take. Or it is going to force us to change the filibuster rule on the issue of judges because of the unprecedented use and requirement of a supermajority.

What I am pointing out is, while the Democrats can take this tactic, it is going to force a response which would be legal by a Republican majority in the Senate, by the President, but all of which is unsatisfactory and not right. We ought to be voting on these judges.

We have seen the numbers. I think if the numbers were not so extreme, we would not feel so forced into a corner, but the numbers are extreme. The Senate has accumulated the worst circuit court confirmation record in modern times, thanks to this partisan obstruction. Only 35 of President Bush's 52 circuit court nominees were confirmed, which is a confirmation rate of 67 percent. In comparison, President Johnson's confirmation record in his first term in office was 95 percent, as were 93 percent of President Carter's nominees.

The other side may point to the district court, the trier of fact, level of confirmations. Yes, those are there, but the circuit courts are the ones that get to review and interpret the law, and we are trying to get judges who will interpret and not write the laws.

A number of people are willing to allow judges to write laws. I am not one of those. That is our job. That is my constitutional role, that is my constitutional requirement, and the oath I took to the Constitution to write the laws and not to pass them off to the judiciary or to say: Well, it is too tough for us, let's let it pass through there.

Plus, what irritates so many people is the use of the judiciary in so many areas that are so personal and deeply felt within this society. People are saying this is not right, this is something that should come in front of legislative bodies. Maybe it will take several election cycles for the body politic to get in a position to resolve these issues, and that is fine, it should take time on these major issues before us.

Also, I do not want to just focus on the numbers. We should remember these nominees are not some sort of political prop. These are good people with careers and commitment to public service, the quality and depth of which is enviable.

Also, I note that a solid majority of people agree strongly with the President's position that he should pick judges who strictly interpret the law rather than legislating from the bench, what the judges think the law should be. Ignoring this mandate, some in this body, spurred on perhaps by outside interest groups, are threatening yet again to filibuster these judge nominees.

We are now embarking on a dangerous area if we talk about changing the role of the judiciary in this society and blocking nominees because they are going to stay with the interpretation of the law and not write law. I

think we should be thinking long and hard before we go with judges and give a license for them to be more expansive in their role in the legislating arena. That is wrong. It is not in the Constitution. It is not the division of powers. We should have judges who strictly interpret. That is what these nominees are about and much of the base of this fight is about.

I urge my colleagues on the other side of the aisle to think about what they will force in response by this tactic, and there will be a response to this tactic. I do not think it is wise for this body to move toward that route.

I thank the Chair for this time. I yield the floor and yield back the remainder of time.

The PRESIDING OFFICER. The majority time has expired.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 605, to provide a complete Substitute.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, the highway bill which is presently before us comes to us pursuant to a budget agreement that was passed last Friday morning. In fact, I guess it was passed about 1 a.m. Friday morning. That budget agreement had in it language that said there would be $284 billion spent on highways under this highway agreement. It also had language in it referencing something which is called a reserve fund which essentially says if legitimate offsets could be found, and if they were determined to be legitimate by the chairman of the Budget Committee, then that number could be increased by the amount of those legitimate offsets.

Initially, when the bill was brought forward it was brought forward at $284 billion. It was brought out of committee at $284 billion. On Monday during the wrapup session, by unanimous consent, that bill, which had already been subject to a substitute, was hit with another substitute that had 1,300 pages in it. Within those 1,300 pages—and they are not absolutely sure of this number yet—somewhere in the vicinity of $11.5 billion of new spending out of the highway trust fund. That in and of itself was inconsistent with the budget resolution that had been passed last Friday in that it was $11.5 billion over that resolution and was therefore out of kilter relative to the allocation given to the committee, the Public Works Committee.

In addition, within those 1,300 pages which were submitted by substitute, by unanimous consent, on Monday night, one legislative day after the budget had been passed, were representations that the offsets had been placed in to pay for the $11.5 billion. There was no referral of those offsets to the Budget Committee as was required under the law that had just been passed on the prior legislative day in the reserve fund of that law. In fact, the offsets as represented first were offsets which would apply to the general fund, not to the highway fund, and therefore created a violation of the Budget Act. But second were offsets which do not pass what we might refer to as the ''straight face'' test. In other words, they were not legitimate offsets. In fact, one of the offsets which was referred to has been used 14 times in the last 2½ years—14 times. Yet it was referred to with a straight face, although I am sure there was a smile behind it, as a legitimate offset.

It would be humorous were it not for the fact that it adds a $11.5 billion burden to the taxpayers, which on the prior Friday we had said we were not going to do to the taxpayers. So the bill as presently pending under the substitute, as put forward on Monday night, the 1,300 pages which are so extensive that CBO, which is the scorekeeper around here, has even had trouble figuring out what is in it, that bill is presently in violation, or that substitute is in violation of the Budget Act. It is quite simply unequivocally, unquestionably a budget buster.

One must ask the very obvious question that when the Senate passes a budget on Friday of the legislative week, if on the Monday of the next week, which amounts to the next legislative day, if that next Monday you are going to by unanimous consent, late in the afternoon, during wrapup, put forward a substitute which includes in it a budget-busting expansion of spending with a euphemistic and illusory statement of offsets—self-serving, also, by the way—if we are at all serious as a Congress about disciplining ourselves when it comes to protecting the American taxpayer relative to the rate of growth of the Federal Government and Government expenditures. It would appear that if this substitute is allowed to survive in its present form, with this additional money being spent, which exceeds significantly what was agreed to in a budget that was passed the day before, the answer to that question would have to be, regrettably, no, we are not.

In addition to that problem, there is the issue of the President. Now, rolling the Budget Committee around here is sort of good entertainment, and it happens, unfortunately, too regularly. But rolling the President of the United States, and especially when the party of the President of the United States decides to roll the President of the United States, is something a little more significant. The President has said 284 is the number, the President has said even if there are offsets, 284 is the number and we are not going above that number. Yet a bill is reported to the floor that met that number with the clear, obvious understanding now that it was going to be gamed, that 284 number was going to be ignored. And now we have a bill that is probably 295, 296, maybe 300. We are just not sure. We are talking billions, folks, just to put it in context. That is not $296. That is $296 billion, which is a lot of money.

So the President has made it very clear—he has made it clear in his press conference, his administration has made it clear, the director of OMB has made it clear, and in an agreement with the House leadership there was a clear understanding the highway bill would spend $284 billion, not $296 billion, whether it was offset or not. Yet that position of the President is being—well, it is being more than ignored. It is being run over by a bulldozer or maybe a cement mixer or maybe a paver. But in any event it is being run over. And that seems a little bit inappropriate, slightly inappropriate to me. Since the President has decided to try to exercise some fiscal discipline, it would seem that we as a party that allegedly is a party of fiscal discipline would follow his lead rather than try to run him over.

So you have two problems. You have the problem of a Republican Senate running over a Republican President because we want to spend more money—or at least some Members of the Senate do—and then you have the Republican Senate running over the Republican budget because some members want to spend more money. Then you have this gamesmanship, I guess would be the best term for it, which occurred on Monday night when you take 1,300 pages and throw it in under unanimous consent and put in it language which raises spending by $11.5 billion and has these proposed offsets which do not pass the straight face test.

So you wonder about that and you have to ask yourself where are we really going if we can't even discipline ourselves on something like this. You have to remember this bill did not start out at 284. It started out 2 years ago at, I think it was 219, maybe it was 220, maybe it was 230. It was in that range. Then last year, through another sleight of hand dealing with the funding mechanism, we shifted—we didn't but some did—$15 billion or $18 billion—I do not recall exactly—out of the general account over to the highway account claiming that there was no revenue impact, that this was an offset, of course, putting an $18 billion hole in the general fund in exchange for covering up with the extra spending

in the highway fund. Then that, with a couple other manipulations, got us up to this 284 number which means that we are already in the hole on this bill relative to the budget approximately $18 billion before this next exercise of adding $11.5 billion on top of it.

It is my obligation, obviously—I end up drawing the short straw around here by some degree by being Budget chairman, but it is an obligation I take on because somebody has to do it and it should be done—to be sort of the person who comes to the floor and says: What the heck are we doing? We pass a budget on Friday which says we are going to control spending, says we are going to limit highway spending to $284 billion, and then on Monday in wrapup, with 1,300 pages of obfuscation, there is thrown in $11.5 billion of new spending, and thrown in are a lot of illusory and baseless offsets. What the heck are we doing?

Well, in the context of what the heck are we doing, I have at least the right to make us vote on this, at least the right to say to my fellow colleagues, if you want to do it, do it in the open a little bit. The way we should have done it, of course, was the way it was originally structured. There should have been a straight up-or-down issue of whether, A, this additional $11.5 billion was a good idea to spend over the budget; or, B, properly offset. That is not now possible to do. I admit the folks who thought this out were creative and they structured it so that is no longer possible to do. It was possible to do on Monday until there was wrapup but not possible to do now.

That is the way it got structured, so I am left with very few options.

Mr. President, I reserve the right to retain the floor for the purposes of discussing with the leader of the bill the timing on this next vote. Is it the leader's position that he would want to vote at 11:15?

Mr. INHOFE. Mr. President, in response to the distinguished chairman, yes, anytime after 11:15 and before 12 o'clock.

Mr. GREGG. Well, I will make the motion now and then ask we be in a quorum call until 11:15.

Mr. INHOFE. I would rather not do it because I will make a motion to waive after the Senator makes the point of order. That is debatable and I would like to make it.

Mr. GREGG. We can just set the vote at 11:15 and you can debate it.

Mr. INHOFE. Sure. That is fine.

Mr. GREGG. Mr. President, I ask unanimous consent that upon my making the point of order, should the chairman make a motion to waive that point of order, that vote be at 11:15 with the yeas and nays being considered as being ordered.

Mr. LAUTENBERG. Reserving the right to object, will the Senator repeat the unanimous consent request?

Mr. GREGG. I am asking that we move to this vote at 11:15, but if the Senator needs 5 minutes, we can make it 11:20.

Mr. LAUTENBERG. Make it 11:30. Then I would have no problem with it, and we will try to use time as quickly as we can.

Mr. GREGG. I would ask that the time be evenly divided.

Mr. LAUTENBERG. Yes. No objection.

Mr. INHOFE. Reserving the right to object.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. INHOFE. For clarification purposes, are we now talking about a vote at 11:30; is that correct?

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I believe I reserved the floor.

The PRESIDING OFFICER. The Senator from New Hampshire does have the floor. The Senator from New Hampshire is recognized.

Is there an objection to the vote occurring at 11:30 with the time equally divided? Is there any objection to that restated request?

Without objection, it is so ordered.

The Senator from New Hampshire.

Mr. GREGG. Mr. President, I make a point of order that the pending substitute increases spending in excess of the allocation to the Committees on Environment and Public Works, Banking and Commerce. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I move to waive any relevant provisions of the Budget Act for the substitute and the bill.

Mr. GREGG. The yeas and nays have been ordered, as I understand it.

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. GREGG. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, there can be honest differences of opinion. The way this has worked historically, and I have had the experience on this type of legislation for 19 years now, is that we come up with a bill. The bill we came up with is based on a formula. It is not a pork bill. It is a spending bill because it is a spending bill on infrastructure for America.

My job, and the job of the ranking leader, Senator JEFFORDS, is to come up with a bill that meets the infrastructure needs of America. Then we look to the Finance Committee to help us to find the funds to finance it. I am not about to pass judgment, as others appear to be readily willing to do, to cast disparaging remarks on the nature of the offsets or the nature of the product of the Finance Committee. I know we came up with a good bill. It is one that is not nearly as high, in terms of the amount of money that would be spent, as the needs. In fact, it has been looked at and evaluated that if we are to pass a bill, even at the $295 billion over the 6-year period, of which 5 years are remaining, that it would not even maintain what we have today.

I also want to correct something else because the very distinguished chairman of the Budget Committee is certainly knowledgeable in all of these areas. He talks about being conservative and talks about doing these things in a proper and appropriate way. Well, I would challenge anyone to match my conservative performance and credentials, and yet I have always said that when one comes to this body there are two areas where conservatives are big spenders. One is in national defense and one is in infrastructure. That is what we are supposed to be doing. We are supposed to be building the infrastructure and improving the infrastructure.

This bill is not just any type of bill that is coming along. This is a bill that is a matter of life and death. We put together a formula to determine how the distribution between the States should take place. In that formula, one of the elements is the mortality rate on the highways on a per capita basis. Now, if no one is concerned about the number of lives that are lost, quite frankly my State of Oklahoma has more lives lost on the highway than the average State. Consequently, that is one of many determining factors in a formula. The formulas have factors for the donee States and the donor States, the number of miles and, I might even add to my friend from New Hampshire, even covered bridges.

This bill probably could be considered by most people as the most important bill we will have this entire year. It is probably the second largest bill we will have this entire year. It is one that lets us rebuild the infrastructure of America. We all have heard the statistics. There is no sense going over and plowing those fields again, but it is one also that is a huge jobs bill.

I am not one to say that WPA—actually the WPA looks pretty good now after a few years, but I do not look at Government as the ultimate employer. But when they talk about for each billion of new construction it provides 47,000 jobs, it is a huge jobs bill. It is very significant.

Many people are supporting this bill. There are Democrats, Republicans, liberals, conservatives. As a conservative Republican, I wholeheartedly support it. I support it at the higher level because I think that is what we are supposed to be doing.

I am sure there will be those who want to talk a little bit about the product of the Finance Committee. I know the ranking member of my committee, Senator JEFFORDS, wants to make a statement or two. We have between now and the next 25 minutes to discuss this. I just want to assure my friend, the chairman of the Budget Committee, I am very sincere, and I think

we are doing the right thing. While I do not always agree wholeheartedly with the President, I do 99 percent of the time. In this case, I disagreed last year. Last year, when we came up with $318 billion, we should have passed that. I believe the Finance Committee was sincere when they said we had this covered, and it was something that I supported at that time. The President did not support it.

There are a lot of things we pass that I would like to debate and not pay for. This is not one of them. I feel very strongly that we should go ahead. Quite frankly, I do not think the number is high enough, but if this is all we can cover, then I am happy with that. The most important thing is we have to have a highway bill. We are on our sixth extension right now. The States are wondering what we are doing. They have no way of planning in advance. They cannot plan for the next 5 years. All they can do is say: We have another 6-month extension. What will we do for the next 6 months? Then we all miss the construction season. In States such as that of my friend from Vermont, a northern State, and the State of New Hampshire, we have already missed the majority of the construction season. So it is very important that we not continue with extensions and that we get this bill passed. To do this, we already have a cloture motion in effect. We need to get by this motion, and I think we will be doing that.

I yield to the ranking minority member.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise today in support of manager's package for the highway bill.

This package, which combines all four titles of the Safe, Accountable, Flexible, Efficient Transportation Equity Act, increases funding for our highways and transit systems by $11.2 billion.

I commend Senators GRASSLEY and BAUCUS for putting together a package that not only increase the resources for our States but does not add to the Federal deficit.

One cannot drive this highway bill on empty. Funding is its fuel, and we need to make sure this bill has a full tank when it leaves the Senate and heads to conference.

The White House argues that the financing of the manager's package is based on gimmicks.

To that I say nonsense.

If Senator GRASSLEY and Senator BAUCUS tell me it is paid for, then I believe them.

Frankly, compared to the funding levels in last year's highway bill, today's package is modest.

The President should be claiming victory and applauding our actions rather than threatening a veto.

This additional funding will mean we can make more roads safer, make sure more Americans face less traffic, and create more jobs.

This additional funding benefits every State, every city, every country and every town. This additional funding makes all the world of difference.

I would yield the floor at this time and offer the Senator from Arkansas such time as he desires to discuss the transportation bill.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, we do want to hear from the Senator from Arkansas, but in fairness, we should go back and forth. The chairman of the subcommittee, Senator BOND, wants to be heard first. Does the Senator from Vermont have an objection to that?

Mr. JEFFORDS. That is fine.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Missouri.

Mr. BOND. How much time do we have remaining?

The PRESIDING OFFICER. Six minutes for the proponents of the motion.

Mr. BOND. I ask that I be given 4 minutes of that, allowing 2 minutes for my colleague on the other side of the aisle.

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

Mr. BOND. Mr. President, we are once again asking for the support of our colleagues to raise the contract authority or budget authority in the highway bill. We said we were going to do this when we brought it to the floor. Eighty of our Members voted in the Budget Act to allow the Finance Committee to come in with additional resources, which they have done. There has been discussion about the legitimacy of the offsets and the Finance Committee actions. The Joint Tax Committee has scored it. That is the authoritative view. It does not add to the budget. The comments about this being a budget buster are absolutely wrong. These funds are paying for the money we add.

I will explain a little bit of complicated budgetary process. There are two things called the obligation limit, which is the amount that can be spent, the guaranteed amount. Traditionally, we have put a higher number into the bill for what we call budget authority, or what is called contract authority. That is because the highway departments cannot spend all of the money that they contract, and to enable them to spend the $283.9 billion guaranteed spending proposed by the President we have to have a higher contract or budget authority number.

This measure, which was added by the Finance Committee and which is now subject to the point of order, was designed to raise, with a fully offset amount, the spending so that we could provide additional funds for badly needed State roads.

Let me be clear. This amount that was added will enable us to bring all donor States up to 92 cents on the dollar by the end of the period. It will also guarantee those States which are at the bottom of the list in terms of increases to get at least a 15-percent increase. It is imperative that those who joined with us in the 80-vote majority to add the provision allowing the Finance Committee now reaffirm that they believe this money is necessary.

The additional money, contract or budget authority, will not be spent, the obligation limit will increase slightly, but we cannot spend the money the President said we should spend, the $283.9 billion, unless we increase the contract authority. Obviously, that's lots of confusion but that is where we are.

I urge my colleagues who understand, as the chairman and ranking member of the committee and my colleague Senator BAUCUS on the committee understand, we have to have this money for safety, for economic development, for continued growth and the health of our economy.

I yield the floor and reserve the remainder of our time for use by my colleague.

The PRESIDING OFFICER. Who yields time? The Senator from Arkansas.

Mr. PRYOR. Mr. President, I rise to offer my support for the motion to waive the budget point of order and also to support the efforts of the Senator from Oklahoma and urge my colleagues to also support those efforts. This legislation is 2 years overdue. I am very pleased we are finally making some headway on getting this done. Forcing our States to operate under the uncertainty caused by short-term extensions is no way to govern. We are now in the sixth extension, and it is my hope that we are able to complete our work in the Senate and complete the conference before the current extension expires at the end of the month.

I also thank Senator INHOFE, Senator BOND, Senator JEFFORDS, and Senator BAUCUS for their very hard work on this bill and all the time they have spent and their efforts in working in such a bipartisan way. I also thank Senator SHELBY and Senator SARBANES on the hours they have put in on the transit portion, and I thank Senators LOTT and INOUYE, as chairman and cochair of the Commerce Committee Subcommittee on Surface Transportation and Merchant Marine for their work on the safety portions of this bill.

Economic development is a very important part of any infrastructure development—we talked about that a little bit this morning already—but not at the expense of the safety of families. This bill enhances the safety of our roadways.

As a member of the Commerce Committee, I was very happy to have the opportunity to play a role in developing the safety titles. It is good legislation that will increase the safety of our highways for all Americans, and it is bipartisan legislation, developed with the input of safety groups, industry, the administration, as well as State and local officials.

Every great nation in the history of the world has flourished because of improvements to its infrastructure. If you look at the great periods of development and invention in the world, almost all of them have coincided with advances in transportation options, whether it is safely moving people, expanding trade, or increasing contact between cultures. My constituents remind me all the time about the importance of roads and relieving congestion and creating economic growth—virtually every time I go to Arkansas. Last week when I was there, people were asking me, when in the world are you going to get the highway bill done?

Our constituents are very smart. As I travel the State I hear the same four things over and over, and I believe they are right. They tell me the four things we must accomplish in this highway bill are, No. 1, we must produce a highway bill that addresses critical infrastructure needs that are not currently being met; No. 2, we must produce a highway bill to spur economic development and the creation of jobs.

How is my time doing, Mr. President?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PRYOR. I ask unanimous consent for 2 more minutes.

Mr. GREGG. Mr. President, I yield the Senator 2 minutes off of my time, even though he doesn't appear to be agreeing with me.

Mr. PRYOR. I will make it quick. I thank the Senator for yielding the time.

No. 3, we must produce a highway bill to increase the safety of our transportation system for American families and, No. 4, we must produce a highway bill that anticipates future needs.

I could go on and on about how important it is for job creation, which we talked about a few moments ago; about how much more congested our highways are today as opposed to 10 years ago, and how congested they will be in 20 years from now.

I offer my support and encourage my colleagues to support the efforts of Senator INHOFE and others as we go through this very important legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to take this opportunity to respond to the points raised to justify the budget point of order. The reason I want to do that now is because there are some things that are not clear about this legislation. I tried to make them clear in my remarks yesterday, but it is obvious that if they had been clear, there would not have been a budget point of order.

One of the points made by the chairman of the Budget Committee and other Members of the Senate is that the Senate highway bill is larger than the President's request. It was alleged that Senate authorizers ''snuck in'' a change in their substitute, without a separate vote, to increase the bill's level of funding above $284 billion. Senate budget staff is correct that the amendment on the Floor that is pending is larger in size than the bill requested by the President. Senate leadership, all authorizing committees, and the Finance Committee were well aware of this fact and made a determination to offer a substitute amendment in excess of the President's request. This makes perfect sense and, of course, is in keeping with separation of powers and the fact that the President, under our Constitution, proposes and the Congress, under the Constitution, disposes.

A majority of the Senate wishes to provide more infrastructure resources than the executive branch. The substitute bill, with increased funding, is completely offset or revenue-neutral. As a matter of fact, the bill contributes positively and substantially towards deficit reduction. As indicated in my statement yesterday, the administration and the budgeteers should focus on deficit reduction rather than on the top-line spending number. The Senate continues to offset legislation and, by so doing, exercises fiscal restraint, a fact being continuously ignored by some in this body.

Another point made is that provisions passed in the JOBS bill last October—sometimes referred to as FSC/ETI bill—signed by the President in October, that somehow the provisions we had in that bill relating to fuel fraud did not increase general fund receipts or even things dealing with other tax provisions did not increase general fund receipts. I speak of acronyms that we used last fall that may not be familiar to people now that we are by that legislation. But we constantly talked about the ethanol provisions with the acronym, VEETC, volumetric ethanol excise tax credit, and fuel fraud provisions that were enacted in the JOBS bill which other Members of this body have alleged, and I quote here, ''have made the highway trust fund healthier by $2 to $3 billion annually only by definition, since merely moving around deck chairs has not changed the Federal Government's bottom line.''

That is a serious accusation considering how careful we were over a period of months last year not only to work on the VEETC provisions to bring in money to the Federal Government that was fraudulently not being paid but also to make sure that we did it in a fiscally sound way.

This is my answer to that accusation. Last year the JOBS bill enacted ethanol and fuel fraud provisions that increased projected receipts to the highway trust fund by $17 billion during the period of the highway bill reauthorization, 2005 to 2009. These provisions were also included in last year's transportation bill but had to be enacted instead in the JOBS bill after it became clear that we would not get a conference agreement on the highway bill.

That is an unfair accusation that somehow all this work that we went through is just moving around deck chairs but has not changed the Federal Government's bottom line. Seventeen billion dollars coming in during that period of time, $17 billion, some of which was being fraudulently avoided.

Congress had good reasons to enact the ethanol changes in the JOBS bill. These changes helped to pay for a large bipartisan tax bill to provide tax relief to domestic American manufacturing. And these ethanol changes accompanied other energy incentives in that bill that had overwhelming support of both Chambers and both parties. Because of those ethanol changes, fuel excise tax receipts are now going into the highway trust fund. That means the Federal highway program now has more dollars available to it. It is just common sense. That is how trust fund accounting works.

It seems that some would now allow us to ignore those accounting rules. Some would like us to pretend that those new fuel tax dollars are not in the trust fund. You can't change what are just plain facts of life. These funds are in the highway trust fund.

This Congress should not pretend that a law enacted by a previous Congress did not happen. We are not using fuzzy arithmetic or fuzzy accounting. We are not just moving deck chairs around and not affecting the Government's bottom line. We are, in a very real way, affecting the Government's bottom line. And we are going to have, not only people who were avoiding paying taxes paying those taxes, but we are going to be able to have better transportation infrastructure, better highways by what we are doing. We should not ignore standard fund accounting rules because a minority of this Senate disagrees that taxes paid on a gallon of ethanol should not go into the highway trust fund.

The administration did not object to these provisions as part of the JOBS bill last October. The President signed that bill and now the administration's own transportation proposals rely on these new trust fund receipts that were developed in a bipartisan way by the Senate Finance Committee. The changes that we made in the JOBS Act made good sense, common sense, but that comes out also as good policy. They raised money for the highway trust fund.

We have every right—indeed, we have every obligation to the people who pay money into the road fund—to use those funds to improve America's highways.

If you don't use trust fund money for highways or for other transportation reasons, you should not be taxing it in the first place. But once it is taxed, those people who are fraudulently not paying that tax are guilty and should pay that tax. Our provisions do that.

Another claim by the Budget Committee is that the Finance Committee has not provided real offsets for increased burdens to the general fund. My colleague from New Hampshire, chairman of the Budget Committee,

suggests that our bill offsets, including economic substance, are illusory. He is concerned that these offsets, which were also passed during the last Congress, will be dropped in conference.

Now, the Joint Committee on Taxation, as we all know—maybe some of us forget—is the official scorekeeper on tax matters in the Congress, not the Congressional Budget Office. The Finance Committee has provided tax law changes that have been scored by the Joint Committee on Taxation as fully offsetting any increased burden to the general fund. The Joint Committee on Taxation is the official scorekeeper for revenue provisions under the Congressional Budget Act. It is not the Senate Budget Committee that is the scorekeeper; it is the Joint Committee on Taxation. Section 201(g) of the Budget Act restricts the Congressional Budget Office in a manner in which it carries out its responsibilities related to revenue legislation. Section 201(g) provides, in pertinent part:

> For the purposes of revenue legislation, which is income, estate and gift, excise, and payroll taxes, considered or enacted in any session of Congress, the Congressional Budget Office shall use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation. During that session of Congress, such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such committees in determining such estimates.

This, then, should put to rest this debate about whether these offsets that are in my amendment and in Senator BAUCUS's amendment—that is a bipartisan amendment—are real. They have been scored by the Joint Committee on Taxation, the official scorekeeper under the Congressional Budget Act for revenue purposes.

I kind of think that maybe the Budget Committee is living in an ivory tower. It is particularly troubling that this nonsense attack—that the offsets are not real—comes from a committee that doesn't have to do any of the heavy lifting to find real offsets and real savings. But instead just find reasons to complain about some other committee's work. It must be nice to be able to just pick numbers out of thin air and try to claim the numbers are real or, in this instance, somehow not real, even though the Joint Committee on Taxation scores it as revenue-neutral, or better than revenue-neutral, as reducing the deficit. But it is the Finance Committee, not the Budget Committee, that actually has to do the hard work of finding, negotiating, and drafting the policies that can pass the Senate and create these real offsets.

Yesterday, I said 40 percent of the new funding is hard trust fund money. Of course, the Finance Committee gets no credit for that effort, no credit at all. It is a ridiculous charge. It is so easy to throw rocks around here. How about dealing with constructing policy instead of throwing rocks? I would like to see some of that.

The complaints we are hearing are from a committee that has no responsibility to find real numbers, real offsets, or real savings. It reminds me of an agricultural economist telling a farmer how to farm. I suggest that those who are sitting on the fence giving this farmer—and I am an Iowa farmer—stewardship advice about how to farm should get off the fence and get some dirt under their fingernails, and I will be happy to show them how to start the tractor. And I say this as a person who has been very loyal in my membership on the Budget Committee, as well as being chairman of the Finance Committee, because out of 48 amendments that were offered to destroy the budget that came out of the Budget Committee, I supported the chairman on 47 of the 48 amendments.

Now, the suggestion was also made that we have used these revenue raisers in the previous Congress. None of the offsets included in the highway substitute have passed the Senate this year as part of any other legislation. Even if that were the case, those additional anticipated revenues are available until they are passed by both Houses and enacted into law.

There seems to be an additional concern that the offsets used in this bill would not survive a conference with the House. As a person who worked for 8 years and 3 days—from when I first introduced the bankruptcy reform bill to when the President signed the bill a month ago—if I would have ever stopped because a bill passed the Senate but somehow didn't get to the President, we would never have a bankruptcy reform bill. But we passed that bill seven or eight different times—the conference report, plus original legislation through the Senate. How you get things done in the Senate is by sticking with it—just don't give up.

And we are doing that here. We continue to close corporate tax loopholes the same way. People on the Budget Committee are finding fault that we might pass the Senate and not get out of conference. That somehow means we are using a smokescreen. Let me suggest that on the JOBS bill last year, which I have already referred to several times in my remarks today, we passed through the Senate $39 billion of corporate tax loophole closers, and we ended up out of conference with $24 billion of that $39 billion. I don't think that is such a bad track record. If it had not been for the Senate and the bipartisan approach of the Finance Committee, we would not even have those $24 billion of loophole closers—money coming into the Federal Treasury. So you cannot just stop. Because these offsets, whether they be fraudulent use of tax dollars, nonpayment in a fraudulent way of gas tax money or other loophole closers—in all of these cases we have people finding ways to avoid paying their share of taxes that ought to be paid.

One has to keep at it. There is a constant game around here of lawyers, accountants, and investment bankers that like to game our Tax Code. It is pretty hard to keep ahead of them, but I am determined, and Senator BAUCUS is determined, to keep ahead of them. So I am not going to have anybody tell me we are not legitimate when we pass things through the Senate that maybe cannot survive conference because eventually they do survive conference, and eventually they are signed by the President.

The Senate cannot be subjected to the expectation of passage in the House as a standard for this body. The Senate has to focus on what is possible in the Senate, and differences will be resolved and reconciled with the other legislative body during the conference process.

As an additional point, I note it was Ways and Means Chairman BILL THOMAS, not the Senate Finance Committee, who first proposed codification of the economic substance doctrine, which is the largest revenue provision added in the substitute bill. I would also like to recite a little of the history of this matter so we will not presume that something maybe will not get through conference because maybe it did not get through conference last October, particularly when the chairman of the House Ways and Means Committee first brought up this issue.

The Senate Finance Committee began its work on tax shelter legislation in 1999. During the years 2000 and 2001, the Finance Committee released three discussion drafts to stimulate public comment on the closing of corporate tax shelters. None of these drafts contains codification of the economic substance doctrine that we are using in this amendment before the Senate right now as an offset. In May 2002, the Finance Committee reported out the Tax Shelter Transparency Act of 2002, which formed the basis for the tax shelter disclosure rules enacted in last fall's tax bill. The Tax Shelter Transparency Act did not contain codification of the economic substance doctrine.

In July of 2002, a mere 2 months after the Finance Committee reported out its bill, Chairman THOMAS laid down H.R. 5095, the American Competitiveness and Corporate Accountability Act of 2002. This bill would have repealed the FSC/ETI regime and used the proceeds for corporate international tax reform. It was also the first time the Ways and Means Committee dipped its toe into the waters of tax shelter closing legislation.

H.R. 5095 parroted the disclosure provisions of the bipartisan Senate Finance Committee-reported bill, but it went one step further—it called for codification of the economic substance doctrine. So where did folks get the idea around here that somehow economic substance doctrine codification is blue smoke, intended to mislead the Senate into believing that something is

revenue-neutral when it is not because this bill is revenue-neutral as scored by the Joint Committee on Taxation.

As an aside, I remind my colleagues that this additional money comes out of the hide of tax shelter promoters and tax shelter participants, not out of the pockets of the honest middle-class working men and women of America. This is not phony money, as maybe we were led to believe. This is good tax policy.

In emphasizing that the Senate highway bill is bigger than that provided in the budget resolution, the following quote was used: ''[i]t appears the Finance Committee floor amendments include provisions quite similar to those general fund transfers that were included in last year's Senate-passed bill. Such general fund transfers do nothing to offset the deficit effect of the increased spending in that amendment.'' I want to say why that is hogwash. The Members of this body have indicated, and will vote their intent on this issue in just a few moments, to spend more than was included in the Senate budget resolution. No procedural games, gimmicks, or end runs will be needed to prove this point. As the distinguished chairman of the Senate Budget Committee indicated repeatedly during the budget process, if there are 60 votes for something, then so be it, and clearly more than 60 members of the Senate are in agreement about this budget point of order.

But we do take issue with the fact that we were accused of sending an amendment to this Floor for consideration by 100 Members of the Senate that did nothing to offset the deficit effect of increased spending. The accusation is purely false and purposely misleading. Our substitute amendment replaced trust fund and general fund receipts and contributed substantially to the deficit reduction by more than $10 billion.

Finally, to those critics of the Senate Finance Committee title, I reissue the challenge I put to them yesterday, that obviously was not listened to. It is the same challenge from last year. If they do not like our Finance Committee title, come forward and tell us they do not want any new money for their State from this highway bill. Alternatively, if they want to keep their State's extra money, find another way to get there that will yield 60 votes. I issued the challenge last year, I issued the challenge yesterday, and I reissue that challenge this very hour.

Now, I did not get any takers last year, I did not get any takers yesterday, and I do not expect to get any takers today. So once again, it is easy to complain, but we are here to do the people's business and this amendment that came out of my committee is the people's business—it is financially responsible, doing things to close corporate tax loopholes, to be fair to middle-class working men and women, to get the job done basically of improving our highway and transportation infrastructure.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I say to the Senator from Iowa, the distinguished chairman of the Finance Committee, what a great job they have done. We imposed upon them the obligation or the duty of coming forth and coming up with a way to pay for a more robust bill. As I have said several times before, there are still other things we need to be doing, and even with the action that has been taken, it is not enough, but I understand he does now have it in a position where we are not increasing the deficit; that this is properly offset and I would almost believe those who oppose what he is doing are people who do not want the bill to start with.

We have been inviting people to come down with their amendments. I see the Senator from New Jersey is in the Chamber. I am anxious to get as many people down as possible and would encourage those Members who have amendments, keep in mind, the deadline for filing amendments is now behind us and we are operating under cloture right now. We need to have them get down and not wait until the last minute.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. What is the status of the time?

The PRESIDING OFFICER. The Senator has 13½ minutes.

Mr. GREGG. And the opposition?

The PRESIDING OFFICER. No time.

Mr. GREGG. Mr. President, to respond in part—and in whole, hopefully—to some of the points that have been made here, let me begin by saying I have an immense amount of respect for the chairman of the committee and for the Senator from Missouri, for the ranking Democrat on the committee, the Senator from Vermont, a neighbor who is retiring and who has done great service for our country and has decided to relax and go back to a beautiful State. Of course, he is going to go to New Hampshire to buy his goods because we don't have a sales tax, by the way. The chairman does exemplary work. He has been a tireless advocate, obviously, of trying to get this highway bill across the floor.

Honestly, I thought the Budget Committee had done its job when we went to the $284 billion number, which was a lot higher than where the President had started. I thought the President had done his job when he went to the $284 billion number as a compromise which was a lot higher than he started out. I think he was at $250 billion when he began this process. I thought we had reached agreement. Then Friday morning at 1 a.m., when we passed the budget, I was pretty sure we reached an agreement. The agreement was $284 billion.

Unfortunately, the amendment which showed up Monday night put a pretty big hole in that budget—$11.5 billion. As I have said earlier, we have to ask ourselves, why did we pass the budget on Friday to have the effect on the next legislative day—the next legislative day—to break the budget by $11.5 billion.

The Senator from Missouri says it is not a budget buster. I have to point out to the Senator from Missouri that yes, it is. That is what we are voting on. If it were not a budget buster, the Chair would not rule in my favor that it breaks the budget. That is what the motion is. The motion is this violates the Budget Act.

It violates the Budget Act on 2 counts. I am not taking the first count because that is a procedural battle. I am taking the second count, which is the substantive battle, which is that this amendment violates the Budget Act because it exceeds the allocation to the committee by $11.5 billion. So it is a budget buster. If it were not a budget buster, you would not have to waive the rule, you know, so let's not throw that straw dog out there.

And the offsets? I agreed with the chairman of the Finance Committee when he came to the floor last night and said, and I will quote:

> I also understand and agree with the House position that we should not mix general fund offsets and trust fund resources to that end.

I agree with that. But, yet, this amendment, this substitute, does exactly that. It takes money out of the general fund, moves it over to the trust fund, and then claims that the trust fund spending is offset by very illusory alleged revenue increases in the general fund, as I pointed out in my earlier statement. One of these revenue increases, the biggest one, has been used 14 times in the last 2½ years—14 times. How many times can you use a revenue increase?

We all know it is not a real revenue offset. We all know it is going to be dropped at conference. It has been dropped at conference every time it gets used; it gets used. It gets dropped, but the spending goes on. So as a practical matter the offsets, from the standpoint of the Budget Committee, do not plug the hole that is put in the budget, first because they do not apply to the trust fund which creates spending beyond the committee's allocation, and second because they exceed the general fund—they will not occur. I guess that's the best way to say it. They are not going to happen. The offsets are not going to happen.

Excuse me, I don't want to be excessive here: $700 million of the alleged $11.5 billion we deem to be legitimate offsets. They will occur.

But, independent of that, independent of whether this offset issue is real or not, and it is not real, by the way, the President—he is a Republican, he was just elected—reached an agreement with the House. He said, ''I am going to let you spend $30 billion more than I really want to spend in this area,'' but he has said—having made that concession to our colleagues because he got pressure—we are going to

hold the line at $284 billion. That is it. No more.

We all know that highways are important. We all know infrastructure is important. But we reached a consensus, first between the President and the House leadership. I agree, Senator INHOFE did not sign on to that idea, other than to bring a bill out at that number, but I agree, he is very forthright. He has always been committed to getting a higher number. But at least within the context of the greater party, the Republican Party, there was an agreement at $284 billion with the President of the United States. And then we confirmed that agreement last Friday with the budget for which 52 Republicans voted.

I am not expecting any votes on this issue from the other side of the aisle. During the budget process they proposed amendments which added $260 billion to the budget, so clearly the issue of controlling spending is not that high on their testing, on their schedule of agenda items. But it should be on ours. We have a President of our party say $284 billion is the number, and when that has been agreed to by a large membership of our party including, I believe, the majority leader in the Senate and the Speaker of the House, and when we confirm that agreement by passing a budget that says that is the number, we should stay with that number. It is what I would call common sense and probably appropriate action. That is why it is important, I believe, that we hold this number.

I respond to one other sidebar representation here—because it needs to be responded to but not because it is the essence of the debate—the question of the amendment that passed when we were marking up the budget, which had 80 votes, relative to how the additional highway spending would occur should additional highway spending be approved and be within the budget, called a trust fund. That trust fund had, as part of its structure, that if there was to be additional spending over $284 billion, it would have to be offset and it would have to come back to the Budget Committee so the Budget Committee could review it to determine whether the offsets were legitimate. That did not happen. The substitute occurred Monday night. We never saw it. It took us a long time to find it. It was 1,300 pages. People have been looking for a long time to find out exactly what it means. Even CBO is having a lot of trouble shaking it out. But we know we were never consulted on that number or how it was offset, which would have been the requirement under that reserve fund. Therefore, the representation that a vote on this waiver issue should be tied into your vote on that amendment issue is very hard to connect. In fact, the two pass in the night. There is no relationship between the vote that occurred in the budget debate and the vote on this waiver issue.

This waiver issue is very simple. The chairman of the committee has moved to waive a budget point of order because the bill as it is presently structured spends more than the budget that we passed on Friday night by $11.5 billion. It spends that much more than the budget passed.

The offsets, we believe, are illusory. I presume the Finance Committee will argue that they are not. But they have used them 14 times before, so I will leave it to the body to decide whether they are.

But independent of that issue, the offset issue, the simple fact is this amendment puts an $11.5 billion hole in what was an agreed-to number relative to the allocation, relative to what was going to be spent, relative to what the President thought was the understanding, and relative to what we had in our budget.

I see the majority leader is here. I yield the remainder of my time to the majority leader.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I know we will be voting here in a couple of minutes, but I did want to rise in support of the Budget Act point of order against the pending substitute to the highway bill. I do commend the chairman of the Budget Committee, Senator GREGG, for raising it.

We do need to exercise fiscal discipline in the Senate. This bill is a good example. We all want to pass a strong highway bill. It will benefit our economy and will create millions of jobs across the country. As I have said on the floor many times, it will contribute to safety on our highways. It is long overdue. The previous bill, TEA–21, expired in September of 2003 and on six occasions we have had to pass extensions. The current extension expires at the end of this month and we need to get this bill to conference as soon as possible, in my mind, so we can resolve what differences exist between the House and the Senate bill and so the President can sign it as soon as possible.

It should be clear to all of my colleagues the path to getting a bill signed into law will be smooth only if Congress stays within the spending parameters that have been laid out by the budget resolution we passed last month and by the President of the United States who must ultimately sign this bill.

The budget resolution, as Chairman GREGG has noted, allowed for transportation spending over a 6-year period of $283.9 billion. We passed that budget resolution here in the Senate a couple of weeks ago, on April 28.

In addition, the President of the United States has made it clear he will not sign a bill into law that spends more than the amount provided for in the budget resolution—$283.9 billion over 6 years. He made it clear publicly, privately, and in the statement of administration policy on this bill, which clearly states:

Should the obligation or net authorization levels that will result from the final bill exceed these limits the President's senior advisers would recommend that he veto the bill.

Finally, I want to make clear that sustaining this budget point of order will not kill the highway bill. Another substitute would be offered that stays within the spending limits set forth in the budget resolution and by the President, just as the various titles reported out by the different committees of jurisdiction did.

I am convinced we can pass a good bill that addresses America's infrastructure needs, creates millions of new jobs, and can be signed into law by the President. We should move forward to do just that.

I yield the floor.

The PRESIDING OFFICER. All time is expired.

The yeas and nays have previously been ordered. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL, The following Senator was necessarily absent: the Senator from Minnesota (Mr. COLEMAN).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 76, nays 22, as follows:

[Rollcall Vote No. 118 Leg.]

YEAS—76

Akaka	Domenici	Nelson (FL)
Alexander	Dorgan	Nelson (NE)
Allen	Durbin	Obama
Baucus	Feinstein	Pryor
Bayh	Grassley	Reed
Bennett	Harkin	Reid
Biden	Hatch	Roberts
Bingaman	Inhofe	Rockefeller
Bond	Inouye	Salazar
Boxer	Jeffords	Santorum
Bunning	Johnson	Sarbanes
Burns	Kennedy	Schumer
Burr	Kerry	Shelby
Byrd	Kohl	Smith
Cantwell	Landrieu	Snowe
Carper	Lautenberg	Specter
Chafee	Leahy	Stabenow
Clinton	Levin	Stevens
Cochran	Lieberman	Talent
Collins	Lincoln	Thune
Conrad	Lott	Vitter
Corzine	Lugar	Voinovich
Crapo	Martinez	Warner
DeWine	Mikulski	Wyden
Dodd	Murkowski	
Dole	Murray	

NAYS—22

Allard	Enzi	Kyl
Brownback	Feingold	McCain
Chambliss	Frist	McConnell
Coburn	Graham	Sessions
Cornyn	Gregg	Sununu
Craig	Hagel	Thomas
DeMint	Hutchison	
Ensign	Isakson	

NOT VOTING—2

Coleman	Dayton

The PRESIDING OFFICER. On this vote, the yeas are 76, the nays are 22. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to, and the point of order fails.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Oklahoma.

Mr. INHOFE. Madam President, the vote that just took place is significant. We all realize that the Finance Committee has done their job. The Joint Tax Committee has verified that their work is good. They have found legitimate offsets. It is easy to say there are not, but there are. While it is very much a concern to everyone in terms of the budget and deficits, I am always ranked, certainly, as in the top five most conservative Members of this body. I can tell my colleagues, I would not vote for something that is going to increase the deficit. This is not increasing the deficit.

When we stop to think about what we are supposed to be doing in Washington, we talk about a lot of silly programs, but the two most important things on which you might say I am a big spender are, No. 1, defense and, No. 2, infrastructure. There is nothing more important that we will be voting on this year than this bill. We all know the reality that we need to get this to conference, and it was necessary to pass what we just agreed to in order to get it to conference.

I understand Senators CORZINE and LAUTENBERG are ready to offer an amendment.

I yield the floor.

Mr. GREGG. Madam President, unfortunately, I rise because I feel it is necessary to respond to the statements of the chairman of the Finance Committee which were made on this floor, both personal to me as chairman of the Budget Committee and to the staff of the Budget Committee, which I thought was an unfortunate decision.

Earlier we had a vote on waiving a point of order relative to whether this substitute, which is pending, was consistent with or is consistent with the budget we passed last Friday. Now, by definition that point of order would not have to have been waived if it was not well made. And by well made, I mean that the Chair would have ruled that this amendment, this substitute, did and does violate the budget resolution. The reason it violates the budget resolution, and I made this point earlier when I spoke, and I think I was accurate—in fact, I believe my comments this morning were entirely accurate, although they were represented to be inaccurate, regrettably—let me reiterate them. This budget resolution point of order lay because we went from a number of $284 billion—and this is the essence of the issue here—which was the agreed number, $284 billion—that is the number we agreed would be spent on the highway bill—we went from that number, under the substitute, to a number of $295 billion-plus. We don't know the final number because, quite honestly, there are so many pages in the amendment even CBO can't catch up with it, but we know it is at least $11.5 billion over the budget number, which was $284 billion.

This number, $284 billion, was not only a number which had been agreed to under the budget last week, it was a number that the President had said he wanted and on which the President had reached an agreement with the congressional leaders, the Speaker of the House and the majority leader. So it was not a number pulled out of thin air, nor was it a number that was not reached after a significant amount of consultation. It was, rather, a number which was reached after having considered what we could afford, what was coming into the trust fund, what was going out of the trust fund, and what could be afforded in this area of highway construction.

I think the representation was made, unfortunately, by the chairman of the Finance Committee, that the Budget Committee was acting irresponsibly, essentially—and that is my characterization; the words actually were a little stronger than that—when we raised the point of order, saying: Hey, listen, we passed a number at the number $284 billion, the President agreed with the majority leader and Speaker of the House that $284 was the number, and therefore we should stick to 284.

That is our job as a Budget Committee. I understand, certainly, the chairman of the Finance Committee chairs the most powerful committee in the Senate by far. The Appropriations Committee is competitive, but our jurisdiction, unfortunately, with the shift toward entitlement spending, has been lessened. It used to be the Appropriations Committee had about 60 percent of the Federal spending. Now it is about 30 percent. Finance has about 50 percent of the Federal spending because it has all the major entitlement accounts.

But we recognize—I certainly do as chairman of the Budget Committee—that the Finance Committee is one of the two most powerful committees in the Senate, of which the other one is not the Budget Committee. Certainly the Finance chairman has every right to come to the Senate floor and remind us of that, as he did. But it really isn't appropriate for him to come to the floor and suggest that we should not still do our job simply because we are not as powerful a committee as his; that our job should be basically we should stand out of the way and just be nice little folks who stand in the corner, and when the budget is getting run over by a powerful committee, just say: Hey, no, we don't get involved in that because we are not a powerful committee. The Budget Committee was not structured that way. The Budget Committee was actually structured to be sort of a conscience around here, a fiscal conscience of, What the heck are we doing?

Yes, we only got 22 votes, which shows maybe our conscience isn't all that strong. But, in any event, we have an obligation to raise the issues. So when we raise those issues, I think for the chairman of the Finance Committee to come down here and say, in terms which were most aggressive and most intense, that the Budget Committee was acting inappropriately and its staff was acting inappropriately, I just think that is misdirected. It does understand, but it doesn't acknowledge the fact that the Budget Committee exists. He is on the Budget Committee; I guess he knows it exists—as he mentioned. He has been a good supporter of the Budget Committee. I have never denied that. I have always said he was a good supporter of the Budget Committee. I respect him. I think he is one of the best chairman around here, as I think this chairman, the chairman of the Public Works Committee, is. I am constantly impressed by what the Senator from Oklahoma is able to do here. He is good, and I admire that, as is the chairman of the Finance Committee, and the chairman of the Finance Committee is not only very good but he works very hard, as the Senator from Oklahoma, to be bipartisan, which I think is important, too. I tried to do that when I chaired an authorizing committee. But still that doesn't mean that we should ignore the importance of this issue.

To get into the substance, to respond again to some of the points that have to be responded to—I am sorry they have to be respond to, but I do think they have to be responded to because the intensity of the argument that we were not accurate in raising this point of order is such that to let it just sit would be wrong. Again, I regret that I have to do this.

The point, to go back to the essence of the issue, was that the budget set at $284 billion the level of allocation for the highway bill. Under this amendment, that spending goes up to $295 billion-plus. That was the point of order.

As an ancillary to that discussion, we did get into the issue of just what has happened in the history of this highway bill. Yes, last year through the JOBS bill there was a finessing of the way money flows from account to account around here, so that the highway fund was given a lot more money at the expense of the general fund. I made reference to that.

I didn't mention ethanol, although the response spent a lot of time on ethanol. In fact, I specifically didn't mention ethanol because I know that tends to incite some Members around here. I just simply said last year about $15 billion ended up being moved out of general fund activity, or being laid off on the general fund, in exchange for giving the highway fund an extra $15 billion. And no matter how you account for it, we end up $15 billion short. That is just the way it is. The money gets spent on the highway proposal, and so we are $15 billion short.

The way it worked, to get specific, was that the subsidy to ethanol gasoline, which is about 5 cents a gallon

which had been borne by the highway trust fund, was shifted over to the general fund, so the general fund ended up with about a $13 billion hit. The highway fund ended up with a $13 billion windfall, arguably.

Then there was about $2.5 billion which historically had gone, since 1993, from the gas tax into the general fund, because under the 1993 agreement there had been an agreement that the gas tax would be raised—I think by 5 cents—and it was agreed at that time that half of that would go to the highway fund to build roads and the other half would go to deficit reduction, and historically those moneys have stayed there for deficit reduction or in the general fund. So that money was taken out of the general fund and moved back to the highway fund. It was probably a legitimate decision, but it did cost us $2.5 billion or thereabouts. So that is where the number came from. I think it was an accurate statement. We were basically putting about a $13 billion hole in the general fund in order to get this bill up to the $284 billion level.

To go from the $284 billion level to the $295 billion level, which again created the point of order because that exceeded the allocation, the Finance Committee reported a bill which represented that they had offsets to pay for that difference. They said Joint Tax had scored it that way.

First off, I said the offsets were illusory. I believe they are illusory. But I also made the point that even if they are not illusory, it didn't matter because it still created the problem for the budget, which is that you exceeded the $284 billion. But I think it is hard to argue—and again I use the term it didn't pass the ''straight face test''—to argue that an offset that has been used 14 times and failed 14 times is an offset that has much likelihood of success.

The chairman makes the point, and it is a legitimate point, that he is a stick-to-it guy and he is going to get this someday no matter what, and he is going to stick to it no matter what. I admire that. He is a stick-to-it guy. His work on the bankruptcy bill has been extraordinary. His work on a lot of bills around here has been extraordinary, and that is probably because he is dogged on some of this stuff. When he bites ahold of something, he stays with it, and that is impressive.

But I do think when folks are sitting back in the office, thinking about how to pay for this thing, and they came up with putting in the enterprise tax again after 14 attempts at using this item, that they knew the likelihood of that happening was very slim. So I think it was reasonable to say that number was illusory. But equally important, the representation that the Joint Tax Committee is the final arbiter of that question is something I believe has to be clarified, because that was the chairman's position.

So I think I would like to know the clarification of this. As chairman of the Budget Committee, I believe I have the right to know whether Joint Tax or the Budget Committee is the final arbiter of that because, as I understand it, under section 201(f), which was cited by the chairman of the Finance Committee, but not entirely:

> The Budget Committee of the Senate and the House shall determine all estimates with respect to scoring points of order and with respect to execution of purposes of this act.

I ask a parliamentary inquiry of the Chair:

Who is the proper scorer of points of order relative to revenues and expenses?

The PRESIDING OFFICER. The Senator is entitled to an answer. Under the Congressional Budget Act of 1974, termination of points of order section 312, the Budget Committee determination for purposes of this title and title IV, the levels of measuring budget authority outlays, direct spending, new entitlement authority, and revenues for fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as applicable.

Mr. GREGG. I thank the Chair for that ruling. I hope that clarifies that point and responds, I believe, adequately to the points of the chairman of the Finance Committee that might not be the case.

Let me summarize. We made a point of order, a motion to waive was brought forward, the chairman of the Finance Committee, and the chairman of the Transportation and Public Works Committee were successful by an overwhelming vote and we lost.

I do not think that should lead to the chairman of the Committee on Finance coming to the Senate and suggesting the role of the Committee on the Budget in making these points is in some way inappropriate or irrelevant, that we should not take this effort to try to enforce a budget—especially when we passed the budget last week.

I admire, as I said, the Finance Committee chairman a great deal. I am sorry this misunderstanding has occurred. But I do believe I have an obligation as chairman of the Committee on the Budget to at least speak up on behalf of my staff, who has done an extraordinary job under fairly difficult circumstances.

In that context, for a more historical perspective on the highway bill, since this was cited by the chairman of the Committee on Finance, I ask unanimous consent to have printed in the RECORD the Informed Budgeteer statement which is a budget statement summarizing the history of the highway bill.

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

INFORMED BUDGETEER

As the May 31 expiration date of the latest extension of federal surface transportation programs rapidly approaches, the pressure is on the Senate to pass a reauthorization bill by the end of this month. The House passed its version of the bill (H.R. 3) last month.

The Senate bill is being considered on the floor, as the four committees with jurisdiction—Environment and Public Works (EPW), Banking, Commerce, and Finance—have each marked up their respective titles of the bill. The Banking, Commerce, and Finance titles are added on the floor to the bill reported by EPW.

There are several different metrics that participants in the legislative process are using to evaluate this bill besides ''how much does each state get?''—is it more than the President's request, is there enough ''money'' in the highway trust fund, and does the budget resolution allow it?

Bigger than the President's Request?

The Senate-reported and House-passed bills are, in total, both consistent with the President's FY 2006 Budget request of $284 billion for transportation programs for FY 2004–2009, reflecting the informal conference agreement reached, but not enacted, last year.

End of story, right? . . . given this apparent coalescence around a $284 billion bill? Because the Administration drew a line in the sand most recently with a SAP threatening to veto anything above $284 billion (as well as anything creating a new federal borrowing mechanism), the Senate leadership insisted that the bill brought to the floor not breech that level. The authorizers' action, however, has only lived up to the letter, but not the spirit, of that admonition. Senate authorizers snuck in a change to their substitute, without a separate vote, to increase the bill's funding level above $284 billion. So the bill before the Senate currently exceeds the prescribed level by $10–$15 billion.

Affordable from the Highway Trust Fund? The latest CBO estimates indicate that revenue now credited to the highway trust fund is sufficient to support a $284 billion bill, mainly due to provisions in the American Jobs Creation Act (AJCA) of 2004 (P.L. 108–357), enacted in the closing days of the 108th Congress. But last summer the highway trust fund could not have supported a $284 billion bill. How can the highway trust fund all of a sudden have sufficient resources?

Last summer, the Senate faced the exact same pickle it does now. The Senate's highway spending appetite ($319 billion) was greater than the level of related federal revenues dedicated to highways and transit at that time. The Finance Committee had intended to pay for the additional spending through a combination of (1) brand new revenues from those who had been avoiding gasoline taxes (fuel fraud) and (2) shifting the incidence of revenues the government was already collecting (2.5 cents gas tax), or already not collecting (ethanol subsidy), between the general fund and the highway trust fund (general fund transfers).

To the extent that some proposed increases in highway trust fund spending were being justified on the concept of general fund transfers (which do not constitute new revenue to the federal government), that spending would have been a pure increase in the federal deficit. Because of bipartisan concern about such a deficit increase on the part of some of its members, the Finance Committee committed to offsetting some of the general fund transfers with unrelated (to highways) revenue raisers.

Such unrelated-but-real new revenues could have mitigated the deficit increase that would have otherwise resulted from the component of higher trust fund spending rationalized by magically ''augmented'' trust-fund balances. However, when the highway bill failed to emerge from conference last year, the fuel fraud and general fund transfer provisions were lifted out of S. 1072 and enacted separately in AJCA, without the accompanying additional offsets that had been promised by the Finance Committee.

It is true that the enacted fuel fraud provisions are now bringing a welcome $1 billion or so per year (that was not being collected before) to the federal government and the highway trust fund. But the enacted general fund transfers have made the highway trust fund ''healthier'' by about $2–3 billion annually only by definition, since merely moving around deck chairs has not changed the federal government's bottom line.

Nonetheless, because there is a new CBO baseline and a new Congress, highway spending proponents in the Senate only seem to notice that the highway trust fund will now support a higher level of spending than it did six months ago (even though gasoline consumption has not increased, and has probably decreased because of higher prices). They seem to forget that some of the spending that will be done on the strength of these general fund transfers was supposed to have been offset by real revenue increases.

Bigger than the Budget Resolution? The ''reported'' Senate transportation bill already exceeded the levels of contract authority allocated for 2006 (for the Banking Committee) and for the 2006–2010 period (for all three committees) by the FY 2006 budget resolution just adopted.

How can that be if the 2006 budget resolution assumes the $284-billion level? The oversimplified answer is that the budget resolution assumed the stream of contract authority associated with the H.R. 3 as passed by the House (because the House had completed its action, while the Senate had not finished reporting as the conference report on the budget resolution was being finalized). But the spread of the $284 billion across the years and over the different types of transportation spending (highways, transit, and safety) is different in the ''reported'' Senate bill, which means that the Senate bill does not fit an allocation based on the House bill. Therefore, a 60-vote point of order (under section 302(f)) applied against the ''reported'' bill.

Now that the bill has been increased by $10–$15 billion, a point of order applies against the $295–$300 billion bill. (Last year, a 302(f) point of order was raised against S. 1072 the Senate highway bill in the 108th Congress, but the Senate waived it by a vote of 72–24.)

Authorizers potentially could avoid a 302(f) point of order by employing the mechanism established in section 301 of the 2006 budget resolution, which anticipated that transportation spending demands would exceed the levels allocated by the resolution.

Section 301 says that if the Senate EPW, Banking, or Commerce Committee (Transportation and Infrastructure Committee in the House) reports a bill (or amendment thereto is offered) that provides new budget authority in excess of the budget resolution levels, the Budget Committee Chairman, may increase the allocation to the relevant committee ''to the extent such excess is offset by . . . an increase in receipts'' to the highway trust fund. Such legislation increasing receipts must be reported by the Finance Committee.

The Finance Committee once again has pledged to provide additional receipts to the highway trust fund to support higher spending on transportation programs, but the title of the bill reported by the Finance Committee does not include any offsets.

It appears that the Finance Committee's floor amendment includes provisions quite similar to those general-fund transfers that were included in last year's Senate-passed bill. Such general-fund transfers do nothing to offset the deficit effect of the increased spending in that amendment.

This year's Senate floor debate on the highway bill seems all too familiar, with proponents of higher spending on highway and transit programs potentially considering options that would partially ''pay for'' a larger bill by rearranging paper entries on the government's books rather than increasing resources collected by the federal government—the same as last year's debate. Now the Senate must decide whether to allow history to be repeated, a mere two weeks after it adopted a conference report on a budget resolution to enforce fiscal discipline at agreed-upon levels.

AN EMERGENCY, A SUPPLEMENTAL, OR AN EMERGENCY SUPPLEMENTAL?

While the Senate debated the Iraq supplemental two weeks ago, there was some confusion about the effect of emergency designations and the difference between regular and supplemental appropriations. Over the last four years, Congress has repeatedly approved funding outside the regular appropriations process in response to the wars in Afghanistan and Iraq and the war on terror. The funding has most often been in an emergency supplemental appropriation. Though emergency designations and supplementals are often discussed as if they are interchangeable terms, they are distinct concepts.

Supplemental appropriations. A supplemental appropriation is simply an appropriations bill other than the regular appropriations bills that the Congress must consider each fiscal year (most recently there were 13 such regular bills; for 2006 there are 12 in the Senate and 11 in the House). Neither a supplemental bill nor all items in it are necessarily designated as an emergency or even intended for purposes alleged to be emergencies. Simply providing funding through a supplemental appropriation does not trigger the ''do not count'' (for budgetary enforcement) treatment that an emergency designation provides. Each item in a supplemental must include an explicit emergency designation to receive ''do not count'' status.

Supplemental appropriations are required when, after the regular appropriations are enacted for the year, new events or information requires adjustments to the previously appropriated amounts. Supplementals are also useful for purposes that are known to be temporary because a supplemental provides a discrete and therefore optically severable amount of money that could discourage those amounts from becoming part of and enlarging regular appropriations in future years.

Emergency designations. Emergency designations are attached to individual accounts (and may even be attached to tax provisions or direct spending items in authorization bills), and can be used in any appropriations bill, either regular or supplemental. When a provision is designated as an emergency, the Budget Committee does not count the spending in that line item against the enforceable levels in the budget resolution. Contrary to popular misconception, the emergency spending still counts toward total federal spending and the deficit; it is only not counted for Congressional enforcement purposes.

The appropriate use of an emergency designation in the Senate is most recently articulated in section 402(b) of the Conference Report on the 2006 Budget Resolution, which is the source of the authority to not count emergencies for purposes of budgetary enforcement. Section 402 (and its predecessors in the 2004 and 2005 budget resolutions) have required that the report accompanying any bill with emergency spending to explain the manner in which the spending is sudden, urgent, pressing, a compelling need requiring immediate action, unforeseen, unpredictable, unanticipated and temporary. To date, this requirement has been ignored.

However, whether the emergency point of order applies does not depend on whether this reporting requirement has been fulfilled or on any evaluation of whether the emergency item actually meets the criteria. Instead, the emergency point of order automatically applies to any non-defense spending item that has an emergency designation. Defense emergencies are exempt from the point of order. The existence of the point of order allows any Senator to use the ''eye-of-the-beholder'' test to confront the rest of the Senate with the issue of whether a non-defense item meets the emergency criteria and warrants an emergency designation so that it does not count for enforcement.

If the point of order is raised against a non-defense emergency designation in either a pending bill or amendment, supporters of the spending can move to waive the point of order, which requires 60 votes. If the point of order is sustained, the emergency designation is struck and the spending in the bill or amendment is then counted against the 302(a) allocation and other appropriate levels. If the committee is already at or above its allocation (this is the case for fiscal year 2005), the amendment or bill then faces a 60-vote 302(f) point of order.

Baseline treatment. While the concepts are not interchangeable, a commonality between emergency spending and supplemental appropriations is their treatment in the CEO baseline. Whether in a regular or supplemental appropriation (and regardless of the presence of an emergency designation), every discretionary spending item appropriated for the current fiscal year is assumed by CBO to continue on, adjusted for inflation, in the subsequent fiscal years for baseline purposes. Statutory rules for constructing the baseline mandate this treatment, and CBO has no discretion to pick and choose which discretionary items may be recurring versus a one-time only expenditure.

The Budget Committees are not required to use the CBO baseline as the basis for constructing the budget resolution. But in practice, the Budget Committees use their discretion to adopt an alternate baseline in only limited circumstances. Removing what the Committees view as temporary spending from the baseline is an instance where the Committees occasionally make adjustments to the CBO baseline. However, CBO's 2006 baseline (issued in March 2005) did not include appropriations for Iraq and Afghanistan because a 2005 supplemental has not been enacted, so no baseline adjustment was necessary in this year's budget resolution.

TRANSPORTATION BILL COMPARISONS TOTALS FOR 2004–2009

[$ IN BILLIONS]

	Pres. FY06 budget	House passed (109th)	Senate reported (109th)	Senate passed (108th)
EPW—Highways	227	225	226	256
Banking—Transit	40	42	43	47

TRANSPORTATION BILL COMPARISONS TOTALS FOR 2004–2009—Continued

[$ IN BILLIONS]

	Pres. FY06 budget	House passed (109th)	Senate reported (109th)	Senate passed (108th)
Commerce—Safety	6	6	6	7
Subtotal, Contract Auth.	273	273	275	310
Authorized Discretionary Transit BA	9	11	9	10
Highway Emerg. Relief Supplemental	2	n/a	n/a	n/a
Advertised Bill Total	284	284	284	319

In FY 2005, $2 billion was appropriated from the highway trust fund for the Federal-aid highway emergency relief program to provide funds to repair damage from the 2004 hurricanes and to clear the backlog of emergency relief program requests. The Administration includes this funding in its revised reauthorization proposal, but the House and Senate proposals do not.

NOTE: Totals may not add due to rounding.

Mr. GREGG. Those points having been made, I acknowledge defeat on this point. I admire, as I said, the chairman of the committee for being a successful chairman who knows how to get things done around here. We may disagree on occasion, but my admiration for him certainly does not abate in any way because of those disagreements. In fact, my respect grows. But do not expect we will disappear. We were not wilting violets around here on the Committee on the Budget. We will continue to try to make points on the points of order we think are appropriate.

Mr. INHOFE. Madam President, before the chairman of the Committee on the Budget leaves, there are some areas where an honest disagreement can take place. One is on the idea that if we try to establish a policy in this country that addresses something that is an emotional need or desire of any of these Members and it has nothing to do with transportation, that should not be borne on the backs of the highway trust fund.

We talk about the ethanol provision which I opposed, but nonetheless we had that, the Senator is right, and the cost of that. If they want to pay for it, let them pay for it out of the general fund. Why should the highway trust fund be paying for policies?

And the same is true on the deficit reduction. I stood in the Senate at that time that took place saying I was for deficit reduction but not on the backs of the highway trust fund. The reason I say that is because I have considered this to be somewhat of a moral issue. People go to the pump and they pay tax for gasoline. There is an assumption, as wrong as it is, that money should go to repairing roads and highways and bridges. I do disagree in that respect.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Madam President, I ask unanimous consent that the pending amendment be set aside so the Senate may consider amendment No. 606.

The PRESIDING OFFICER. There is no amendment pending.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. The Chair declares the Senate in recess subject to the call of the Chair.

Thereupon, at 12:02 p.m., the Senate recessed until 1:02 p.m. and reassembled when called to order by the Presiding Officer (Mr. DEMINT).

The PRESIDING OFFICER. The majority leader is recognized.

CAPITOL SECURITY THREAT

Mr. FRIST. Mr. President, we had a short recess for about an hour because of a security threat that, by now, has been covered well in the media. I wish to take this opportunity to thank the Capitol Police and the various assistants throughout the Capitol because when we have that sort of alert, which comes very quickly, very unexpectedly while we are in session here, but at the same time this huge Capitol Building with literally hundreds and thousands of people working in this complex having to stop and evacuate in an orderly way is a real challenge.

So I thank everybody, including our guests, because at the same time we have all of us who are working here in this Capitol structure, there are guests visiting throughout the Capitol. Everybody left in an orderly way and in a way that was safe and calm. As far as I have heard in talking with the Sergeant at Arms, there were no injuries. When you have that sort of rapid departure, that is always a risk.

Our Capitol Police, Sergeant at Arms, and the Secretary of the Senate all responded in a way that we can all be proud of. Most importantly, the offending aircraft is now on the ground, and the pilot and whoever else was in the plane are being questioned.

Now I am happy to turn to the Democratic leader.

Mr. REID. Mr. President, I am grateful that the distinguished Republican leader would come to the floor of the Senate and acknowledge the people who look after us every day. The training of our Capitol Police force is exceptionally good. I was with them, as was the distinguished Republican leader, and I am amazed at their professionalism as they took us away.

I am an alumni of different universities, a proud lawyer, and a number of other things I have had the good fortune of working with over a number of years, but I am an alumni of the Capitol Police. I am very proud of that. I recognize that the work I did those many years ago as a Capitol policeman pales in comparison to the problems that face this beautiful building of the American people.

I am so confident that we have the best police force in the world here on Capitol Hill. They have to deal with bomb threats and all kinds of chemical problems. The Republican leader, who is a doctor, worked through the anthrax problem; I wasn't involved with that. But they are experts at that. They are aware of anything that is going on in the world regarding terrorism because of these evil people from around the world. This is, if not the No. 1 target, one of the top targets.

I appreciate and commend and applaud the majority leader for coming here immediately and recognizing these people who look after us every day. Every day, we see them standing around doors, and they don't appear to be working real hard, but it is on days such as this that they earn their pay over and over again. I am glad and happy that I had the experience to be a Capitol policeman, and I look forward to continually being protected, along with the American public, in this great building by these wonderful men and women.

The PRESIDING OFFICER. The majority leader is recognized.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS—Continued

Mr. FRIST. Mr. President, due to the recess, I ask unanimous consent that notwithstanding rule XXII, all first-degree amendments to the highway bill must be filed at the desk no later than 2 p.m.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. 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. INHOFE. Mr. President, regular order.

AMENDMENT NO. 606 TO AMENDMENT NO. 605

The PRESIDING OFFICER. The clerk will report the amendment that was sent up just before the recess.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. CORZINE], for himself, and Mr. LAUTENBERG, proposes an amendment numbered 606.

Mr. INHOFE. 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 establish the effect of a section of the United States Code relating to the letting of contracts on individual contributions to political campaigns, and to require the Secretary of Transportation to consider State laws that limit political contributions to be in accordance with competitive procurement requirements)

After section 1703, insert the following:

SEC. 17___. LETTING OF CONTRACTS.

Section 112 of title 23, United States Code, is amended by adding at the end the following:

''(g) EFFECT OF SECTION.—Nothing in this section prohibits a State from enacting a law or issuing an order that limits the amount that an individual that is a party to a contract with a State agency under this section may contribute to a political campaign.''.

At the end of subtitle G in title I, add the following:

SEC. 17___. DUTIES OF THE SECRETARY OF TRANSPORTATION.

Section 5323(h) of title 49, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and identing appropriately;

(2) by striking ''A grant or loan'' and inserting the following:

''(1) IN GENERAL.—A grant or loan''; and

(3) by adding at the end the following:

''(2) PROCUREMENT REQUIREMENTS.—The enactment of a law or issuance of an order by a State that limits the amount of money that may be contributed to a political campaign by an individual doing business with a grantee shall be considered to be in accordance with Federal competitive procurement requirements.''.

Mr. INHOFE. May I inquire of the Senator about how long he will be taking for his opening remarks?

Mr. CORZINE. I thank the Senator from Oklahoma for his courtesy. I suspect that my statement will be somewhere in the neighborhood of 10 minutes and Senator LAUTENBERG an additional 5 minutes.

Mr. INHOFE. I ask unanimous consent that at the completion of the remarks of the senior Senator from New Jersey, the junior Senator be recognized.

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

The Senator from New Jersey is recognized.

Mr. CORZINE. Mr. President, I once again thank the Senator from Oklahoma.

Before I begin, I echo the remarks of the majority leader and minority leader congratulating and thanking the members of the Capitol Police for their efforts in protecting all of us, which they so ably do day in and day out. It is a testimony to their forethought that we were so efficiently able to move from the Capitol and protect folks. We are blessed with their efforts. I also thank the Sergeant at Arms and the Secretary of the Senate for their efforts and look forward to saying ''thank you'' personally to all of the individuals involved.

I think I have asked that the pending amendment be set aside and we move to amendment No. 606, if I am not mistaken. Is that correct?

The PRESIDING OFFICER (Mr. ISAKSON). Amendment No. 606 is the pending question.

Mr. CORZINE. Mr. President, I rise today with my colleague, Senator LAUTENBERG, who will be joining me in a minute, to offer an amendment to the SAFETEA Act, S. 732. Our amendment addresses a serious problem where Federal highway and mass transit contracts are awarded by States, those situations where Federal money and State money are intermixed in contracting administered by the State. These contracts are often or can be influenced, either by perception or reality, by political contributions. The Government contracting issue I am speaking of is commonly known as ''pay to play.''

To address this issue in situations where States administer these contracts with both Federal and State money or where Federal money is administered by the State, Senator LAUTENBERG and I are offering this amendment to allow States to set contracting rules that limit campaign contributions by contracting providers. This is something that has been in Federal law for over 50 years where there are straight Federal contracts. Unfortunately, there have been far too many cases across the country where in these circumstances businesses have made contributions to public officials or campaign committees and then expected to influence the awarding of Government contracts. It is not an attractive situation.

Last year, two Governors lost their careers in public service due to pay-to-play scandals in their States. Other high-profile instances of pay-to-play corruption have occurred across the Nation, particularly in my home State where, on a bipartisan basis, our State legislators and Governors have reacted. But this is not unique to New Jersey. It has gone from New Jersey to California, from Philadelphia to Los Angeles and beyond. The problem is widespread and needs to be addressed.

Corrupt practices of pay-to-play have serious implications for the public. They have the effect of limiting competition in many ways because those who give political contributions then get the edge on those who might want to compete to do the business. They often reduce the quality of infrastructure projects—I will talk about a couple of situations that we see, particularly in my home State—and they lower the confidence of the public in elected officials and in public service in general.

Finally, and most important—this certainly is the case in my State—they raise the cost of doing business for the government and ultimately to the taxpayer.

This practice is often more like legalized bribery than I think any of us would like to admit, and it results in a corruption tax that all citizens end up bearing. So I think there is a reason to make sure that we act.

I regret to say this disease has really impacted my State of New Jersey. It is something that, unfortunately, has infected both sides of the aisle in the State, both parties. It really needs to be addressed.

Just last month, dozens of local public officials—and I mean dozens, both Democrats and Republicans in one of our counties—were indicted for soliciting or taking bribes from people doing business with their towns, and it was often in conjunction with political contributions. Sadly, New Jersey taxpayers have been hit with this hidden corruption tax, higher costs of doing business in our State, and I think it needs to be moved against.

Our Governor, with bipartisan support in both Houses, was able to institute a serious pay-to-play ban that requires that any political contribution be less than $300 from anyone who wants to do business with the State. It is a straightforward, easy situation.

Honestly, time after time we have had the public trust broken in this contracting procedure, where Federal and State funds have been misused. We had a motor vehicle inspection contract where there was only one bidder. It was a cost-plus contract that ended up being over $200 million above cost. It ended up costing the Federal Government and the State a lot more than was necessary. Again, it is a corruption tax. We have had other places—the EZ-Pass toll collection system—where politically favored vendors were able to win no-bid contracts. It seems to me we need to make sure we put competition on a level playing field. That is what this amendment is all about.

Fortunately, New Jersey and several other States, as I suggested, have, on a bipartisan basis, addressed this issue. It is about contracting law, however, not campaign finance. It is setting the rules for who has the ability to bid. Unfortunately, the Department of Transportation recently informed the State of New Jersey that these commonsense limits may not apply to highway or mass transit contracts that use Federal funds. The Department of Transportation argued that it might limit competition when, in fact, I do not understand how limiting the amount of a campaign contribution has anything to do with whether someone is going to qualify to participate in a contracting bid. The State is now seeking an injunction in the Federal courts and there will be all kinds of litigation about this over a period of time. Whether it gets overruled or not, I think it is appropriate to institute the possibility that, if a State legislature wants to take the stand that they

would like to set rules for contracting, on contracts they administer, they have the ability to do it.

I think this is important, both for promoting competition but also for ensuring that there is clarity and confidence in the public bidding process, not only in my State but in a number of other States which have also bought into these kinds of rules. It is really a cross-section across the country in various places.

I have here a series of States—Illinois, Kentucky, Ohio, West Virginia, South Carolina—a number of places. These are States, as shown in the light green, that already have bills before their State legislatures. There are an enormous number of local jurisdictions that have also done it: Los Angeles, San Francisco, Oakland, Chicago—24 jurisdictions in my own State of New Jersey.

We think this is an important States rights issue. We should be able to enact laws that fight corruption without interference from the Federal Government. I hope we will look at this in a context that we want to make sure that what would work in those individual States is actually attended to.

Banning pay-to-play is consistent with current Federal practice when it is only Federal contracts that are being awarded. The Government already bans pay-to-play for Federal contracts that are awarded directly.

The Securities and Exchange Commission, along with a municipal rulemaking board, prevents pay-to-play when Government bond issues are at stake—again, a contracting issue, not a campaign contribution rule. In fact, I was instrumental and involved in this as an employer on Wall Street 10 years ago, to ban contributions from bond underwriters because it interfered too regularly with the overall process.

We think we can make a difference. These rules have worked when they have been instituted. They certainly have in the bond underwriting business, and they have Federal rules. The Federal Government is refusing to allow States such as New Jersey to enact similar contract reforms. I think this is an important step going forward.

I want to clarify something about this amendment. We are not establishing a Federal pay-to-play rule in Federal highway contracting. Some of the opponents would have you believe that. Those rules are already set by the Federal Government. It is merely respecting the rights of the State to establish and maintain their own State contracting practices. It only impacts contributions to State-level candidates, not Federal-level candidates. Federal campaign finance laws are in no way affected.

This commonsense measure has the support of a number of groups that work to protect the integrity of government spending: Public Citizen, Common Cause, the Brennan Center for Justice.

I ask unanimous consent to have letters of endorsement from these groups printed in the RECORD.

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

THE CAMPAIGN LEGAL CENTER,
Washington, DC, May 5, 2005.

Re Safe-TEA/TEA-LU Highway Bill and the Government Contracting Reform Amendment

DEAR SENATOR: The Campaign Legal Center strongly urges you to support the Government Contracting Reform Amendment to the Safe-TEA/TEA-LU Highway Bill, which protects the right of states to enact and enforce ''pay to play'' laws.

For more than 50 years federal law has prohibited political contributions to federal candidates from federal government contractors. In recent years, state and local governments around the nation have followed Congress' lead by enacting similar ''pay to play'' laws to protect the integrity of the procurement process.

The right of states to enact and enforce ''pay to play'' laws has recently come under threat. Late in 2004, the Federal Highway Administration determined that a New Jersey State Executive Order limiting the size of political contributions from government contractors to state candidates violates federal law competitive bidding requirements, established by 23 U.S.C. §112, for state highway construction contracts involving federal funds.

This Federal Highway Administration action affects not only New Jersey, but also threatens enforcement of similar ''pay to play'' laws in Kentucky, Ohio, South Carolina and West Virginia. Further, the Highway Administration action curtails the right of other states around the nation to enact their own ''pay to play'' laws.

The Government Contracting Reform Amendment sponsored by Senators Corzine and Lautenberg amends 23 U.S.C. §112, which establishes the competitive bidding requirement for contracts involving federal highway funds, to state that ''Nothing in this section prohibits a State from enacting a law or issuing an order that limits the amount that an individual that is a party to a contract with a State agency under this section may contribute to a political campaign.''

Similarly, the Government Contracting Reform Amendment amends 49 U.S.C. §5323, which establishes general provisions for the award of contracts involving mass transportation funds, to make clear that state ''pay to play'' laws ''shall be considered to be in accordance with Federal competitive procurement requirements.''

State laws restricting political contributions from government contractors are consistent with, and advance the purposes of, the federal law contracting requirements for highway and transit funds. Competitive bidding requirements, and reasonable restrictions on contributions from contractors who do business with the government, both advance the government's interest in avoiding real and apparent political corruption and preserving the integrity of the contracting process.

We urge you to support the Corzine-Lautenberg Government Contracting Reform Amendment to the pending Safe-TEA/TEA-LU Highway Bill, to protect states' rights to enact and enforce ''pay to play'' laws.

Sincerely,

MEREDITH MCGEHEE,
PAUL S. RYAN.

BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW,
New York, NY, April 27, 2005.

Re Safe-TEA Act of 2005 and the Corzine pay-to-play amendment

U.S. Senate,
Washington, DC.

DEAR SENATORS: I write on behalf of The Brennan Center for Justice to support Senator Jon Corzine's ''pay-to-play'' reform protection amendment to S. 732, the ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005.'' Since its inception in 1995, the Center's Democracy Program has been working in the area of campaign finance reform on federal, state, and local levels. We believe that the amendment is important for ensuring that states maintain the flexibility to choose effective tools for protecting the integrity of government contracting.

Systems for government contract bidding have long sought to satisfy the laudable and compatible goals of contracting with low-cost and ethical bidders. For example, current federal law regarding state transportation projects that use federal money provides that ''[c]ontracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility.'' 23 U.S.C. §112(b)(1) (emphasis added). Federal law expressly charges the state transportation department with establishing the criteria of responsibility. 23 C.F.R. §635.114(a).

Several recent scandals regarding government contracting in New Jersey prompted New Jersey to establish a criterion of responsibility for government contracting, which prohibited the state from contracting with an entity that has contributed to a candidate for or holder of the office of Governor, or to any State or county political party committee, within certain time frames. See New Jersey Executive Order 134 (September 22, 2004). The executive order explicitly stated that ''the growing infusion of funds donated by business entities into the political process at all level of government has generated widespread cynicism among the public that special interest groups are 'buying' favors from elected officeholders.'' Id. Courts have recognized that contributions from government contractors present a severe risk of engendering corruption or the appearance of corruption, and thus have generally upheld ''pay to play'' contribution bans. See, e.g., Blount v. SEC, 61 F.3d 938,944–48 (D.C. Cir. 1995) (upholding constitutionality of SEC regulations that prohibit municipal finance underwriters from making campaign contributions to politicians who award government underwriting contracts); Casino Ass'n of Louisiana v. State, 820 So. 2d 494 (La. 2002), cert. denied, 529 U.S. 1109 (2003) (upholding ban on contributions from riverboat and land-based casinos); Gwinn v. State Ethics Comm'n, 426 S.E.2d 890 (Ga. 1993) (upholding ban on contributions by insurance companies to candidates for Commissioner of Insurance).

Recent action by the Federal Highway Administration, however, has threatened to strip New Jersey and other states of their capacity to determine criteria of responsibility, undermining legitimate state efforts to protect against corruption, or the appearance thereof, in government contracting. The FHA took the unprecedented position that it would not authorize federal funds for use in New Jersey transportation contracts because of Executive Order 134. The FHA took this position even in light of the scandals in New Jersey, and despite the facts that (1) all bidders would have notice of New Jersey's responsibility criteria and (2) contracting awards still would be granted to the

lowest bidder. The State of New Jersey is challenging the FHA's position in court. In the meantime, however, New Jersey was forced to rescind much of its executive order since it, like most states, significantly relies on federal funding for many of its transportation contracts. No state should be forced to compromise legitimate and well-grounded efforts to protect the integrity of its government in order to receive federal transportation funds.

The FHA's position could also undermine the FHA's goal of awarding contracts only to responsible bidders and may risk actual, or the appearance of, corruption in the process of choosing bidders. Without rules prohibiting ''pay to play'' arrangements, states may deem entities ''responsible'' not because they have displayed any objective characteristics of responsibility, but rather because they have made contributions to government officials. Federal ethical standards should provide a floor beneath which a state may not go, but federal law should not be used to restrict a state from implementing stricter ethical standards that it deems necessary to protect the integrity of its government.

Senator Corzine's amendment proposes that a provision be added to the Safe-Tea Act of 2005 stating that ''[n]othing in this section may be construed to prohibit a state from enacting a law or issuing an order that limits the amount of money an individual, who is doing business with a state agency for a federal-aid highway project, may contribute to a political campaign.'' For all the reasons discussed above, we urge you to adopt the amendment to ensure that federal highway funding provisions are not wrongly interpreted to permit interference with state efforts to both prevent corruption or the appearance thereof and restore public confidence in its government.

Sincerely,

SUZANNE NOVAK.

PUBLIC CITIZEN, COMMON CAUSE, PUBLIC CAMPAIGN, DEMOCRACY 21, CENTER FOR CIVIC RESPONSIBILITY,

April 28, 2005.

Re Safe-TEA Act of 2005 and the Corzine pay-to-play amendment.

DEAR SENATOR: Next week you will be considering the ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005'' (Safe-TEA Act). Public Citizen, Common Cause, Democracy 21, Public Campaign and the Center for Civic Responsibility urge the Senate to adopt the Corzine ''pay-to-play'' amendment to the bill respecting states'' rights to address the problem of corruption in government contracting.

Sen. Jon Corzine's amendment proposes that a sentence be included in the Safe-TEA Act, as was done in the House version of the bill, allowing states to implement a very narrow and limited reform of government contracting procedures: restricting potential government contractors from making large campaign contributions while negotiating a government contract to those responsible for awarding the contract.

Known as ''pay-to-play,'' many state and local governments are being burdened by the all-too-common practice of a business entity making campaign contributions to a public official with the hope of gaining a lucrative government contract. This practice of attempting to skew the awarding of government contracts in favor of large campaign contributors has taken a serious toll on public confidence in state and local governments across the nation.

Last year, two governors in one week—Gov. George Ryan of Illinois (once considered for a Nobel Peace Prize) and Gov. John Rowland of Connecticut—lost their careers in public service due to pay-to-play scandals. A trial is currently underway in the City of Philadelphia concerning corruption charges in the awarding of government contracts with some members of Mayor John Street's administration. Similar scandals have recently racked California, Hawaii, New Jersey, and the City of Los Angeles.

Unfortunately, the Federal Highway Administration (FHWA) has decided to make it difficult, if not impossible, for states to address this serious problem. For example, the FWHA has decided to punish New Jersey for reforming its contracting system by withholding federal highway funds from the state. We believe you will agree with us that this federal intervention is unjustified and counterproductive. That is why we urge you to support language that makes clear that states have the right to ensure that their contracting procedures conform to the highest ethical standards and offer the best value for taxpayers.

New Jersey Gov. Richard Codey reluctantly suspended the state's pay-to-play rules for competitive bid contracts pending the outcome of a court challenge to the FHWA decision. [New Jersey v. Mineta] ''This is a temporary measure forced on us by the federal government,'' Codey said. ''I am not happy about it. In making this necessary, the federal government is dead wrong, but I cannot jeopardize nearly $1 billion in federal transportation funds.''

The FHWA has placed itself in the odd position of imposing its preference for a disclosure-only regime on states and localities that have decided a stronger pay-to-play policy is necessary to address their problems of corruption in government contracting. As the FHWA memorandum opines: ''. . . the disclosure of lobbying and political contribution efforts for the year preceding a contract bid is a reasonable means to meet the DOT's Common Rule requirement that the city assure that its contract award system performs without conflict of interest. This is distinct from a provision that actually excludes those making otherwise legal contributions from competing for a contract.''[2]

Many state, local and non-governmental jurisdictions strongly disagree with the FHWA: disclosure is necessary but not sufficient to end actual or apparent corruption in government contracting. Instead, New Jersey and four other states, the federal government and the Securities and Exchange Commission, along with dozens of local jurisdictions, have opted for a narrowly-tailored system of contribution restrictions on government contractors, in addition to disclosure requirements, as a more effective means to curtail pay-to-play abuses.

Sen. Corzine has introduced the pay-to-play protection amendment before you this week, which would add to the Safe-TEA Act: ''Nothing in this section prohibits a State from enacting a law or issuing an order that limits the amount that an individual that is a party to a contract with a State agency under this section may contribute to a political campaign.''

Pay-to-play restrictions are far from draconian measures. They are a narrow remedy that focus exclusively on a specific problem. Pay-to-play restrictions are easy for the business community to live with—the SEC's Rule G–37 championed by former SEC Chair Arthur Levitt, which served as a role model for New Jersey's pay-to-play policy, has not resulted in draining the pool of bond bidders—and pay-to-play restrictions are limited in scope and constitutional.

The Federal Highway Administration may believe it knows better than the states how to address their problems of actual and perceived corruption in government contracting, but the FHWA has not yet had to suffer the consequences of corruption scandals that the states have faced. The Senate should join the House and include this amendment to the Safe-TEA Act of 2005 allowing the states the authority to assure their citizens that contracts are awarded on merit.

For more information, please contact Craig Holman, Public Citizen, at 202–454–5182.

Respectfully Submitted.

Mr. CORZINE. Mr. President, I also want to note the House of Representatives included a similar measure in its version of the Transportation bill. It was a bipartisan amendment sponsored by New Jersey colleagues, FRANK LOBIONDO, a Republican, and BILL PASCRELL, a Democrat. This was passed unanimously, the same language, by the House.

In my view, this is an imperative step to allow States to have better control and more transparency and honesty in their contracting processes. I think it will move to save money for our States and put in place a greater sense of credibility for the public when it deals with its oversight of public contracting. I think we owe the taxpayers this, and I urge my colleagues to support the Corzine-Lautenberg amendment. We should join the House, in my view, in instituting this ability for States to control their own contracting process.

I yield the floor.

I understand my colleague, Senator LAUTENBERG, along with our other colleagues who left the Senate at the time of the recess, will be returning to speak to this amendment. I will yield the floor, but I would appreciate it if we could reserve the right of Senator LAUTENBERG, upon his arrival, to come back and be next on the queue to speak.

The PRESIDING OFFICER. Is the Senator asking unanimous consent in a formal request?

Is there objection to the Senator's request to allow Senator LAUTENBERG the ability to speak when he returns to the Capitol?

Mr. BOND. I would amend that request to say, when I am finished speaking, Senator LAUTENBERG may speak.

The PRESIDING OFFICER. Is there objection? Is there objection to the request as modified? Without objection, it is so ordered.

The Senator from Missouri.

Mr. BOND. Mr. President, there are a number of things that need to be cleared up as we consider this amendment. First, the Senator from New Jersey has mentioned that several States have their own pay-to-play restrictions. But according to the Federal Highway Administration, those States are ones that are restricting contributions where there are not competitive bids. They are talking about no-bid contracts.

I do not doubt that New Jersey has had problems with no-bid contracts. I will leave it to my colleagues to discuss some of those problems. What we are talking about is changing the competitive bid system so that one State

can opt out of a mandate that the Federal Government has imposed. That mandate is, when using Federal aid to highway dollars, you have to bid it competitively because when we as national taxpayers are funding projects, then we have a right to see that they are done on a competitive-bid basis, to make sure that the Federal taxpayers get the best bargain for their money.

The name of my colleague, the other Senator from New Jersey, is attached to the amendment. I find it interesting that his reputation is one of sanctioning and penalizing States that do not conform to Federal laws, so it was alarming to me to see this amendment from the New Jersey Senators that will exempt them from complying with Federal regulations. In my State there are a lot of things our chosen Representatives, the people who serve Missouri in the Missouri General Assembly, choose not to do. There are various mandates that impose burdens on our State that will limit its ability to get funds. If we are going down the road of exempting our States from mandates of the Federal Government on Federal highway aid dollars, I think the Missouri General Assembly and the Missouri Governor would pass along to me quite a number of mandates they wish to have taken off of their backs.

We just passed another mandate to take $900 million out of the highway trust fund to pay for storm water improvements for local governments. I think that is an unfortunate mandate; it was adopted by a very close vote. I hope we will be able to revisit it. But when you start exempting a State from the competitive bid contracts to allow them to impose their own campaign finance laws through the Federal highway aid system, that, to me, does not seem to be a proper use of the Federal highway tax dollars. We have a right to expect that we get the best bargain for the money and that is through competitive bids.

This amendment, as I read it, limits competition and changes the current Federal process. Political contributions have absolutely no effect on the selection of Federal aid highway projects because, unless otherwise approved by the Secretary, construction projects are awarded only on the basis of the lowest responsive bid that meets the established criteria, based on the State's department of transportation engineering estimates.

Very simply put, unless the Secretary of Transportation waives it, you have to take what the State Department of transportation has put together in its request for bids, and make the best bid complying with that, that is responsive, at the lowest price.

That does not offer opportunities for corruption. There may be people in New Jersey and other States who find other ways to corrupt the system. I do not deny that. I think they should be punished. But there is no reason, in my view, to repeal the competitive bid standards. If States want to regulate their State projects by limiting competition, by all means, they should be free to do it.

If it is a State contract, States can put in anything they want. There are other States, as I mentioned earlier, that currently have pay-to-play laws in place, but there are four States that have pay-to-play laws, two of which—Ohio and South Carolina—only apply to no-bid contracts having no effect on highway and transit projects because these are let under the competitive low-bid method.

I believe the Senators from New Jersey think they are being singled out by the Federal Highway Administration as Kentucky and West Virginia have similar pay-to-play laws—but both Kentucky and West Virginia have exceptions to their provisions. Kentucky excludes contracts awarded competitively on the basis of the lowest and best bid, while West Virginia's exception is the restriction that only applies during negotiation and performance of the contract.

These provisions are clearly different from what the Senators from New Jersey seek for their State. To open the process in other States, we do not need to have Federal aid highway dollars used as a means of changing campaign finance laws or changing the competitive bid process which gives us the best bid on the projects that are funded with Federal dollars.

I don't want to see State laws preempting Federal laws, but if we are going to go down that road, as I said, I have a number of amendments, and I would certainly ask support for all the areas that Missouri wants to exempt from some of the mandates, many of which I think are unnecessary from the Federal Highway Administration laws.

At this point, I urge my colleagues not to support this amendment because it provides a very different standard which New Jersey is attempting to use in its award of competitive-bid contracts.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. If I might ask the Senator from Missouri, if he has read the New Jersey legislation, in no way by my reading of that legislation does it supersede the competitive bidding requirement.

Mr. INHOFE. Will the Senator yield?

Mr. CORZINE. Yes.

Mr. INHOFE. Mr. President, I ask unanimous consent, notwithstanding rule XXII, all first-degree amendments to the highway bill must be filed at the desk no later than 3 o'clock. We are extending it from 2 o'clock to 3 o'clock because of the evacuation.

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

Mr. CORZINE. I see the Senator from Missouri is no longer in the Senate, but I make very clear the amendment Senator LAUTENBERG and I are proposing in no way undermines the standard that there need be competitive bids in the Federal highway funds or in Federal funds that mix both State and Federal dollars.

This is about contracting rules that would encourage competition, not discourage competition. I believe if we were put side to side with Kentucky and West Virginia, we would find the New Jersey contracting rules are parallel. We would find this is one of the reasons the House unanimously agreed to this because it is an additional step that in no way undermines the standards that exist by the Federal Government.

Again, it reflects the desires of the State legislature and the Governor to have stronger, stricter rules on contracts administered by the State.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I start by commending the chairman of the Environment and Public Works Committee for his work on behalf of getting the funding raised for the Transportation bill.

It is critical. There is not a State that would not like to see more money for highways, transit or whatever else they do—perhaps even for long-distance rail service.

The manager of the bill, the chairman of the committee, had to wrestle with not only his conscience, but colleagues who felt differently. There were over 20 ''no'' votes. I wonder if those Senators would forgo the extra money that resulted from the increase in the size of the bill. Perhaps that could be polled.

I thank my colleague, Senator CORZINE, for generating this amendment which I share in sponsoring to ensure integrity in highway contracting. My friend and colleague from New Jersey has always fought against corruption in public activities and contracting. I am proud to stand and fight alongside him to make sure every State has the right to make choices about how it conducts its campaign financing laws and how it looks to better management of the process so corruption is avoided. That is what this is about.

One has to look at the bill. It is relatively simple. Frankly, I thought it would be something that could be accepted on its face by unanimous consent. There is no punitive measure in here.

I understand our colleague from Missouri said I was big on sanctions. How right he is. I am big on sanctions. We raised the drinking age to 21. When our colleague, Senator DOLE, was the Secretary of Transportation under President Reagan, we sanctioned States who did not put that into law.

Guess what the outcome is. Twenty thousand young people have been saved over the last 21 years. That is what the sanctions did. Would it be better to not have sanctions and have the freedom for the teens to get on the highway and kill themselves? I don't think so. It

worked. We tried the carrot. But there were not enough carrots to take care of it, so we had to use the stick. That is what you do. That is what the red lights are for. It is a stick. It says: Do not cross over when traffic is going the other way, et cetera.

We are a nation of laws. That is what the structure of our society is. There are sanctions against those who would try to buy a gun permit when they are spousal abusers. There are sanctions. They go to prison. Yes, I like that kind of sanction.

When we look at what we are trying to do, unfortunately, the U.S. Chamber of Commerce says it should not happen, it reduces competition. Nothing could be further from the truth because now the little guys who, in their judgment, make a campaign contribution—we foster that notion around here: Contribute if you can. Contribute even if you cannot, we sometimes say. But it happens. Money flows. So we say to some small contractor or some attorney or some engineer who has a two-person business: Well, maybe there is an exemption for small business. But, on balance, they are saying the smaller companies cannot make a contribution because then they would be barred from competing. Competing with the big guys? It is outrageous.

So this amendment fixes a problem in Federal highway law that actually prevents States from taking effective steps to curb contracting abuses.

Earlier this year, the Federal Highway Administration withheld some $250 million in highway funding from the State of New Jersey. It had already been allocated. What happened? We had to change the law. We had to open a loophole so people could contribute, even though our Governor at the time and the legislature agreed: No, we should not permit it. I am not defending it. I am saying I defend States rights. And many of the people here, particularly our friends on the other side, defend States rights. I think the State ought to be able to decide whether it wants to clean up the campaign finance laws.

Spokesmen for the FHWA said a State contracting rule designed to prevent actual and potential corruption was ''inconsistent'' with current Federal law. I do not know where they get that one.

What had New Jersey done? The State had simply banned certain large political contributions by recipient of State contracts. Its mission was to ensure fairness and transparency in the contracting process, and our State ought to be commended for it. Instead, New Jersey was punished for exercising its own judgment. The Governor signed it. The legislature passed it, the Governor signed it, and it became law. Why cannot we do that?

The relevant Federal law, section 112 of the highway title, calls for competitive bidding. The administration has taken the strict view that if some bidders are excluded, that could limit competition. Would we say that in the vetting of a company's executive leader, if he had a criminal past and they did not make a contribution, it would be all right? No, it certainly would not be all right for that company to start doing State business. But the fact is, if the playing field is tilted toward one company, there is no true competition. Maybe the big guys can afford to do that. They can rule the roost. But that is what our State wants to protect against.

States should not have to choose between receiving Federal highway dollars they need and restoring public confidence in the Government contracting process. What an anomaly we had here a little while ago. We had people voting to increase highway spending when it is threatened that the President is going to veto it, and we are way over the limit the White House proposed for the highway bill. Seventy some Senators said: Oh, yes? Impose limits? Well, we are not going to stick with your limits. We are going to raise the limits because our States need bridges and highway fixing and investments in transportation. That is what we want—70 some Senators. So it was not all Democrats. It was a mix.

It is hypocritical to continue to prohibit States from taking effective measures to maintain the integrity of their contracting process. Federal law already prohibits political contributions from Federal Government contractors. So why shouldn't States be allowed to do it, if they want to—one State by itself, any State that wants to do it? This amendment simply allows States to enact similar reforms when they so choose.

The House of Representatives has already approved a similar provision in its version of the transportation bill. I ask my colleagues to support this amendment to promote good Government, to promote competition. It is a vote for States rights, and a vote against corruption in public contracting.

Once again, I commend my colleague from New Jersey, Senator CORZINE, for his initiative.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Missouri.

Mr. TALENT. Mr. President, I thank the Chair for recognizing me.

I want to take a few minutes, if I can, to pause from this debate on the amendment to make a few comments about the underlying highway bill. I wanted to have a chance to do this when we debated the motion to waive the budget point of order, but I was not able to do so because of the unanimous consent agreement that limited time for debate.

So I thought I would do it now because I am very grateful to my friends, the managers of this bill on both sides of the aisle, Senator JEFFORDS and Senator INHOFE, my good friend and a zealous worker for better transportation infrastructure, Senator BOND and, of course, Senators GRASSLEY and BAUCUS for their amendment which we adopted earlier increasing the size of this highway bill. I thought it was important that those of us who feel strongly about this come down and say so.

We have a problem with transportation infrastructure. The problem is getting to be so big that awareness of it has penetrated even here in Washington. But everybody in America, at least everybody in Missouri I talk to, already knows about it, and has known about it for a very long time. Because they have to drive on these roads. They have to use the rail and the transit. For them, it is not an abstract question of public policy. For them, it is a question of getting where they need to go, to do what they need to do, safely and on time, to make this country run. It is getting harder and harder because the roads are no good.

I am going to try to contain my frustration about this issue. It is hard because this is not rocket science. A lot of the issues we confront here are very difficult.

This really isn't that difficult. We know how to build roads. We know we need to do it. The question is whether we have the will to do what we obviously need to do and what will empower our people to help us create the wealth and opportunity that will then enable us to do the other things we need to do.

I said there was a problem before. The statistics have been repeated often enough, but I guess in the Senate nothing is ever said quite enough so I am going to repeat them. Thirty-two percent of the Nation's roads are in poor or mediocre condition; 37 percent of the urban roads are in poor or mediocre condition; 28 percent of the bridges are substandard. I can show you some substandard bridges in Missouri. As a result of this, our Nation loses about $65 billion a year in lost man-hours and lost productivity because people are stuck on the highways. A recent report said it was three times what it used to be in 2003. We lose $50 billion a year in extra maintenance costs because our cars and our vehicles are damaged as a result of the bad roads.

Who among us has not had the experience of hitting a pothole and saying to ourselves, ''There goes that shock absorber. That is another front-end alignment I will have to get''?

This is common knowledge throughout America. The Department of Transportation studied it in 2002, 3 years ago. The problem hasn't gotten any better since then. They concluded—and this is a rather big study—that $375 billion is what we needed in the next highway bill to address the problem. We don't have $375 billion in this bill. We have under $300 billion. We have less than we had last year. We have more than we would have had, if not for the heroic efforts of the bill managers. But we don't have enough even with what they have added. Yet

people on this floor say that this is too much.

This is a problem I have been working on with my friend from Oregon, Senator WYDEN. We believe it is time to begin using bonding as part of our Transportation financing package. We have proposed the Build America Bond Act. A number of people have joined us in cosponsoring the bill. My friend from New Jersey is one of them. This is legislation that would create a federally chartered, nonprofit corporation that would issue about $38 or $39 billion in bonds and set aside $8 or $9 billion of that in a fund which would then accumulate interest over time and be used to pay off the principal. Then we would have $30 billion for immediate investment in the Nation's transportation infrastructure.

We could get that money out in the next construction season or two. We could begin taking some of these vital projects that are constantly moved to the right, moved from 2010 to 2015, to 2020, and start moving them back to the left on the time line. We could build some of the bridges we need, fix some of the roads that are substandard.

We also have a provision in the bill that says some of the bonds have to be in low enough denominations that Americans can purchase them, average folks can go out and buy a $50 bond, a $25 bond, knowing that they are investing in American roads, transportation infrastructure, and jobs to make America competitive for the future.

I am pleased that we have made some progress on this. The bill managers were good enough to include a provision for the underlying corporation in the bill. We don't have authority to issue the bonds yet, but we have the corporation in the bill.

I am also very grateful to the managers of the bill for including in the substitute amendment my amendment to authorize private activity bonds, $15 billion in transportation highway infrastructure bonds.

These bonds could be issued in a partnership between States and localities and private companies for specific projects. The localities would repay the principal through a variety of revenues, including annual appropriations or charging rent for the infrastructure that was built. Since the bonds are tax exempt, it means the holders would pay no taxes on them to the Federal Government. They would be preferred by the market. We could get $15 billion in a kind of bond money out there right away to begin addressing the problems that the country is facing.

Nobody really argues with what I have said. That is one of the things that is frustrating. The people who supported the budget motion, who want the bill to remain small, don't argue that there is no problem. You can't argue the fact that there is a problem. What they say is: We can't fix the problem because we have a deficit. We can't spend more money on transportation infrastructure because we already have a deficit.

Investment in transportation infrastructure is dynamic. That means it helps grow the economy. It helps produce revenue. We understand that in every other context. Nobody argues with that in any other context except the highway bill. All the economic models say about $1 billion in investment in transportation infrastructure produces 47,500 jobs. Every dollar invested returns $5.75. That is the multiplier effect.

The same people who are saying we can't spend money on highway and transportation infrastructure will stand up in the context of a trade bill and say: The reason it is OK to pass an open trade bill—and I have supported many of them—even though we will be trading with countries that have lower wage rates than we do, is that we are still competitive because we have a more sophisticated financial system, a more sophisticated telecommunications system, and a more sophisticated transportation system. They are right. That is one of the reasons we can be competitive with countries that pay lower wage rates because we can get our products to market because decades and decades and decades ago other Senators and other Congressmen had the foresight to invest in transportation infrastructure.

I know we have a budget deficit. We have a transportation deficit. It isn't going to get better if we don't do anything. Saying we can't invest in transportation infrastructure because we are worried about the budget is like a farmer who is hard pressed saying: You know what, I am afraid my cash flow isn't what it should be. I am not going to buy fuel for the combine.

It is like a homeowner saying: The budget is tight. I am really hard pressed. I am not going to fix the hole in the roof because that might cost money.

This is a problem that is not going to get better if we don't do anything about it. Every 5 or 6 years we pass another highway bill, and the people who are concerned about the cost say: It is bigger than it was 5 or 6 years ago. Yes, it is bigger. Every year, even though the highway bill is bigger, the gap between what we are spending and what we need gets bigger, too.

This year, even under the amendment we adopted earlier, we have about a $80-billion gap. I guarantee, if we don't do something about it, 5 years from now it will be bigger than that.

What do the people who opposed the amendment on budget grounds want to do? What can you do to build more transportation infrastructure? You can raise taxes. They don't want to do that. I understand that. It is hard to raise gas taxes when gas prices are up. That is a hard thing to do. They don't like bonding either. That is out. They don't want general revenue to be used for highways. That is out. Now they are saying they don't want other streams of revenue. Even though it would pay for it, they don't want that used either. So they are all for fixing infrastructure as long as we don't use taxes, bonding, general revenue, or any other revenue to do it.

Stop and ask yourself a question for a second: What is the domestic achievement of the Eisenhower administration that people remember? The building of the interstate highway system. Roll Call magazine, one of the Capitol Hill magazines, did a survey of congressional scholars and asked them what the most significant bills were that the Congress passed in the last 50 years. No. 4 on their list was the interstate highway bill passed in the 1950s, which they pointed out intensified economic growth, boosted domestic tourism and made possible just-in-time manufacturing processes.

How can anybody say that investment in transportation infrastructure does not produce economic growth?

I know we have a vote coming up soon. I will close by saying a couple things. In the first place, the bill where we now have it—I was going to say it is the least we should do, but the truth is it is not as much as we should do. I urge the bill's managers to go to conference with this bill as it now is and do everything possible to hold this number or, if possible, find some way to inject more money into transportation infrastructure this year. I know they are committed, and they are going to try to do that. I urge them to stand by their commitment. This is worth doing, and it is worth doing now. We cannot afford to give another 5 or 6 years away to the locusts and then come back here and face the same problem we have now, except it is bigger.

I believe in the people of this country. I am not one to focus on the problems we have. Any Senate, any time in the Nation's history, if it wants to focus on the problems of the country, can get discouraged. I know we are fighting a war now, and we have education issues and health care issues we have to address, and they are all very big.

The reason I am optimistic is I believe in the American people. I believe in the productivity and ingenuity of the American people. The answer to all these problems, broadly speaking, is to empower them, to let them have the resources they need—which is one of the reasons I have been for tax reduction—so they can make the economy grow. Let them do what they do in their everyday lives, raising their families, doing their jobs, running their small businesses, to keep the economy growing and make us prosperous and strong and free. But the American people cannot on their own build roads. They can do a lot of things on their own or together in private businesses or associations of one kind or another, but they cannot build roads. That is a job the Government has to do. We will deal with the transportation deficit, and the American people will deal with the budget deficit as well if they can

get to work in the morning. Let's help them do that.

I congratulate the managers on adopting the amendment. I hope we can do even better in conference.

I yield the floor.

Mr. INHOFE. Mr. President, I do have a statement I wish to make in opposition to the Corzine amendment; however, the junior Senator from South Dakota is here. I would like to yield to him for up to 6 minutes.

The PRESIDING OFFICER. The Senator does not have the right to yield time.

The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I thank the distinguished chairman for his good work in moving this bill along. This is legislation that is long overdue. It is time that we move forward to vote so we can get help to these highway departments across this country, particularly in States such as mine, Northern States, where we are going to lose the construction season if we don't get something done, get a bill passed, and get a permanent authorization in place.

I speak in opposition to the pay-to-play amendment that has been offered to the Transportation bill.

For my colleagues who might not be aware of this issue, the Acting Governor of New Jersey issued an executive order last September which blocks anyone who makes political contributions to state officials, candidates or parties in excess of $300 from bidding on any contract for services, material, supplies or equipment or to acquire, sell or lease any land or Federal building where the value of the contract exceeds $17,500.

While it is clearly New Jersey's prerogative to institute such pay-to-play laws when it comes to State contracting, this New Jersey executive order effectively violated the free and open competition provisions governing Federal Aid Highway and Transit Contracting and went much further than pay-to-play laws in other States.

It's my understanding that New Jersey's Acting Governor, Richard Codey, issued this executive order in response to corruption and kick-backs that were uncovered with respect to no-bid State contracts.

Seeing that almost all of the contracts that occur under the Federal Highway and Transit programs are based on sealed low-bid contracts, the Senate should not adopt this amendment because it would undo the existing uniform rules that all States must follow when it comes to Federal contracting.

Congress has specifically stated in past highway and transit authorizations that we should encourage fair and open competition.

Congress should encourage competition by cultivating the broadest group of competent qualified contractors to do the work. We want to ensure that we are getting the best work done for the best price.

The low bid system was used to build our interstate system and National Highway System. It provides the highest quality product at the lowest possible price through competition. It should be maintained and strengthened, not weakened by adopting the amendment by the Senator from New Jersey.

Soon after New Jersey's Acting Governor issued his Executive Order last year, the U.S. Department of Transportation was forced to withhold a portion of New Jersey's transportation funding because the State was not complying with Federal contracting requirements—this was done after the U.S. Department of Transportation attempted to work this issue out with New Jersey Officials.

Soon thereafter, the New Jersey legislature stepped in and passed a bill on March 22, 2005 that excludes Federal aid highway funding from the Governor's previous pay-to-play executive order—thereby restoring New Jersey's Federal transportation funding.

I share the Senator from New Jersey's concern about illegal activity when it comes to no-bid contracting. However, there is nothing that currently prohibits states from taking action to prosecute those responsible for such illegal activities.

Further, since the current low-bid sealed contracting process used on Federal transportation contracts protects against instances of corruption or impropriety, and the fact that the New Jersey legislature has ensured that its pay-to-play regulations don't impact Federal transportation contracts, I'm a little puzzled why this amendment is needed—unless of course the Senator from New Jersey is seeking to change the existing Federal contracting process.

Federal contracting law already includes a process for the exclusion of contractors who have acted illegally—and the Federal Government also has a debarment process that prohibits contractors who have committed fraud or bribery from bidding on future contracts.

Because the State of New Jersey is currently suing the U.S. Department of Transportation in Federal district court concerning the previous withholding of Federal transportation funds, now is not the time for the Senate to weigh-in on this matter. The Senate should allow the court to hear the case on its merits.

My colleagues will also be interested to know that the Senate Environment and Public Works Committee rejected this amendment when we marked up the transportation bill on March 16.

The U.S. Department of Transportation has informed me that there has not been one single case of kick-backs or corruption with regard to low-bid Federal aid highway contracts in New Jersey.

Most importantly, the U.S. Department of Transportation opposes this amendment and has informed me that the Corzine Amendment would create an unmanageable patchwork of local restrictions and requirements when Federal aid funds are used on a project.

I urge my colleagues to vote against this amendment and to allow the Federal Highway Administration and those State governments that are so interested in getting a highway bill put into place to enable them to address the critical transportation needs this country faces, to get this highway bill passed and defeat this amendment.

I yield back the remainder of my time.

Mr. INHOFE. Mr. President, first, I agree with the comments of the Senator from South Dakota. He has dramatically shortened my speech against the Corzine amendment because he said some things I would have said. I emphasize that the problem is not with sealed bids, it is with no bids. It could be that they have unique problems in New Jersey, but I would not want those problems that are there to encumber what we are trying to do in States such as Oklahoma and New Hampshire and South Dakota. There had been abuses that are pretty well known in New Jersey.

An example is the case of the law firm of DeCotiis, FitzPatrick, Cole & Wisler, which has reportedly thrived by exploiting a system that encourages politicians to reward their political contributors with State contracts that are no-bid contracts—not low-bid but no-bid contracts.

The Record, a New Jersey paper which did an extensive investigation into this DeCotiis firm and their relationship to public officials, stated in a December 2003 article that:

> A sweeping review of DeCotiis's work for towns and public agencies shows how high rollers in this pay-to-play sweepstakes reap huge returns from investments in the right politicians. In a study of DeCotiis's legal bills for towns and public agencies across New Jersey, as well as interviews with dozens of elected officials, the Record has found that the DeCotiis firm billed at least 128 government entities for nearly $26.6 million during the 2½-year period starting January of 2001. From Alpine to Atlantic City, in 15 of New Jersey's 21 counties, and in many departments of State government, DeCotiis's lawyers are charging the taxpayers for contracts that, under Jersey law, can be awarded without competitive bidding.

I have other examples of corrupt kinds of dealings, but I believe my point has been made that here the issue is with no-bid contracts, not sealed-bid contracts.

I question, also, the constitutionality of something in terms of the first amendment, but that has not even been discussed.

There could be a problem. I would be sympathetic to the problem and perhaps the Senator from New Jersey will be holding a position in the not too distant future where he can deal directly with some of the problems that are within the State of New Jersey but are not all over the country.

So I join my colleague from South Dakota in urging the defeat of the

amendment, and at the appropriate time I plan to move to table the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I appreciate the comments. I can understand the point of view if the bipartisan legislation from the State of New Jersey would in any way interfere with low-bid, sealed contracts on Federal projects. I would not be in favor of this, either. No-bid contracts should not be an accepted way of doing business in government. At least from the legal advice and understanding that I have of the New Jersey legislation, it does the opposite. It requires that it would conform both to Federal regulations and adds the additional element that there be restrictions on those participating who have contributed more than $300 in a contract that is over $17,500.

Practically speaking, the reality is that the Department of Transportation, and Republican and Democratic administrations in New Jersey—and I suspect this can very well be the case in other places—sets specifications. Those who both lobby and contribute often arrange those specifications, so there are situations where those who have the ability to participate in the bidding contracts are limited and those specifications are written in a way that gives a bias to the contracting exercise. All this legislation that the State of New Jersey is asking for, its States rights ability to impose, are supplemental to the rules and regulations that the Department of Transportation is taking, and I believe it will protect the public and enhance the confidence for the State of New Jersey.

It is not an imposition on any other State. They do not impose these pay-to-play rules. It has no impact on another State. We are only asking for the ability of the State of New Jersey to put down the rules that the State legislature, on a bipartisan basis, believes will lead to lower costs and greater transparency to the bidding process.

I understand there is a difference of view, but I feel strongly about it and ask my colleagues to consider the fact that this is a supplemental and in no way undermines Federal regulations, does not impose this standard on any other State, and does go a long way toward dealing with concerns that people on both sides of the aisle in my State believe are undermining public trust and raising the cost to the Federal Government and the State government in doing business in our State.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I appreciate the comments, even though I disagree with them, of the Senator from New Jersey. I know he is sincere. I know there is a problem and he is trying to correct the problem and there is an honest difference of opinion.

I ask unanimous consent that a letter from the U.S. Chamber of Commerce opposing the Corzine amendment, a letter from the American Road & Transportation Builders Association opposing the Lautenberg-Corzine amendment, and also a letter from the Transportation Construction Coalition, which is, I believe, almost every labor union in the United States, be printed in the RECORD.

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

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, May 10, 2005.

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

DEAR SENATOR AKAKA: As the Senate continues debate on H.R. 3, the reauthorization of the Transportation Equity Act for the 21st Century (TEA–21), the U.S. Chamber of Commerce strongly opposes an amendment by Senators John Corzine (D–NJ) and Frank Lautenberg (D–NJ) that attempts to change federal competitive highway and transit contracting rules.

For over 25 years, federal law has forbidden states from implementing ''pay-to-play'' provisions for state highway and transit construction contracts (23 USC §112). Federal highway and transit contracts are awarded in an open-bid environment, and it is unnecessary to have an individual state attempt to change these federal contracting rules.

In November 2004, the state of New Jersey passed an executive order with language that included federal highway and transit contracting in the state's ''pay-to-play'' provisions. On January 21, 2005, the U.S. District Court for New Jersey ruled against the state and reaffirmed the federal statute, which led to New Jersey's final ''pay-to-play'' law continuing the longstanding exemption of ''pay-to-play'' for federal competitive highway and transit contracting.

Supporting the Corzine/Lautenberg amendment would adversely affect the ability of business leaders to support candidates, and thus, undermine the importance of allowing business executives and their employees the ability to legally participate in the political process, while other groups would not be impacted.

The U.S. Chamber of Commerce will consider using votes on or in relation to this issue for inclusion in our annual ''How They Voted'' ratings. The U.S. Chamber of Commerce is the world's largest business federation representing more than three million companies and organizations of every size, sector and region.

Sincerely,

R. BRUCE JOSTEN.

AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION,
Washington, DC, May 9, 2005.

DEAR SENATOR: As the Senate continues debate on H.R. 3, the federal surface transportation program reauthorization bill, the American Road & Transportation Builders Association (ARTB) urges you to oppose an amendment by Senator FRANK LAUTENBERG that would modify federal transportation procurement standards to allow states to penalize transportation construction firms that participate in the political process.

The Lautenberg amendment would allow states to preclude individuals who have made financial campaign contributions to state and local officials from competing for federal-aid highway and transit construction work. By excluding individuals who exercise their right to participate in the political process, the amendment would contradict the open competitive bid system of procurement that has been a hallmark of the federal transportation programs for almost 50 years. Under this system, contracts are awarded to the lowest qualified bidder. Political contributions, or the lack thereof, have no role in the awards outcome.

An ARTBA analysis of Federal Highway Administration (FHWA) bid data for the period 1958 to 2003 found that winning highway contractor bids on federally-funded projects have averaged 6.7 percent below the government's own internal cost estimates for the advertised jobs. In total over the 45-year period, the winning contractor bids have come in $22.8 billion under estimated cost.

This analysis proves that the low-bid system works in the public interest. It also shows that highway contractors have been giving the public outstanding value for their tax dollars. Transportation construction industry contractors routinely build highways and bridges that meet exact government specifications for materials, quality, durability and environmental protection for substantially less than the government expects to pay.

Consequently, we urge you to protect the integrity of the open competition, low-bid system for transportation construction work and oppose the Lautenberg amendment to H.R. 3.

Sincerely,

T. PETER RUANE,
President & CEO.

TRANSPORTATION CONSTRUCTION COALITION,
May 9, 2005.

DEAR SENATOR: The 28 national associations and construction unions of the Transportation Construction Coalition (TCC) urge you to oppose the Lautenberg amendment to H.R. 3, the highway and transit program reauthorization bill. The Lautenberg amendment would restrict competition for federal highway and transit work and apply a nationwide solution to a state-specific issue.

The Lautenberg amendment would allow states to prevent companies from performing federal-aid highway and transit work funded by this bill if they made legal contributions to state and local elected officials. The amendment is based on a New Jersey law that significantly limits competition for transportation construction work by blocking any individual that made political contributions of more than $300 from bidding on any contract that exceeds $17,500.

The ''pay to play'' laws of other states typically focus only on no-bid contracts. The New Jersey version, however, applies to a much broader class of projects. Highway and transit projects are typically procured using the lowest competitive bid method, which requires an objective and public evaluation of sealed bids.

Congress has specifically stated in past highway and transit reauthorization bills that states should encourage fair and open competition. States accomplish this objective by cultivating the broadest group of competent qualified applicants to perform transportation construction work and by excluding companies that have acted illegally. The low bid system was used to build the nation's highway system and provides the highest quality product at the lowest possible price.

We urge you to oppose the Lautenberg amendment to H.R. 3. The amendment would significantly undermine the federal commitment to the competitive bid system.

Mr. INHOFE. Mr. President, I move to table the Corzine 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 yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Minnesota (Mr. COLEMAN), and the Senator from New Mexico (Mr. DOMENICI).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON), is necessarily absent.

The result was announced—yeas 57, nays 40, as follows:

[Rollcall Vote No. 119 Leg.]

YEAS—57

Alexander	DeWine	McConnell
Allard	Dole	Murkowski
Allen	Dorgan	Murray
Baucus	Ensign	Nelson (NE)
Bennett	Enzi	Reid (NV)
Bond	Frist	Roberts
Brownback	Graham	Santorum
Bunning	Grassley	Sessions
Burns	Hagel	Shelby
Burr	Hatch	Smith
Byrd	Hutchison	Specter
Chambliss	Inhofe	Stevens
Coburn	Isakson	Sununu
Cochran	Jeffords	Talent
Conrad	Kyl	Thomas
Cornyn	Landrieu	Thune
Craig	Lott	Vitter
Crapo	Lugar	Voinovich
DeMint	Martinez	Warner

NAYS—40

Akaka	Feinstein	Mikulski
Bayh	Gregg	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Inouye	Pryor
Boxer	Johnson	Reed (RI)
Cantwell	Kennedy	Rockefeller
Carper	Kerry	Salazar
Chafee	Kohl	Sarbanes
Clinton	Lautenberg	Schumer
Collins	Leahy	Snowe
Corzine	Levin	Stabenow
Dodd	Lieberman	Wyden
Durbin	Lincoln	
Feingold	McCain	

NOT VOTING—3

Coleman	Dayton	Domenici

The motion was agreed to.

Mr. INHOFE. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Oklahoma.

Mr. INHOFE. Mr. President, there has been a great misunderstanding around here as to how we came up with offsets, how we are going to take care of paying for an additional amount of money in this package.

I compliment the chairman of the Finance Committee, Senator GRASSLEY, along with the ranking minority member of the committee, Senator BAUCUS, for the hard work they have put in on this legislation and, quite frankly, disagree with the criticism to which they have been subjected.

I want to reemphasize, if I could, that it is important we get this legislation done. I am very pleased we have two more amendments that are down here. The deadline for the filing of amendments is now over as of right now. We do have several amendments. We are going to invite these people to bring their amendments down. I am pleased there are two amendments that are already down here. We look forward to taking up those amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

AMENDMENT NO. 625

Mr. LAUTENBERG. Mr. President, I call up amendment No. 625.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself and Mr. DODD, proposes an amendment numbered 625.

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

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

The amendment is as follows:

(Purpose: To provide funding for motorcycle safety programs in States without universal helmet laws)

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

SEC. ____. UNIVERSAL HELMET SAFETY STANDARD FOR OPERATION OF MOTORCYCLES.

Section 153 of title 23, United States Code, is amended—

(1) in subsection (a), by striking ''fiscal year—'' and all that follows through ''(2) a law'' and inserting ''fiscal year a law'';

(2) in subsection (f)—

(A) in paragraph (2), by striking ''fiscal year—'' and all that follows through ''(B) had in effect at all times a State law described in subsection (a)(2)'' and inserting ''fiscal year had in effect at all times a State law described in subsection (a)''; and

(B) in paragraph (3), by striking ''fiscal year—'' and all that follows through ''(B) had in effect at all times a State law described in subsection (a)(2)'' and inserting ''fiscal year had in effect at all times a State law described in subsection (a)'';

(3) in subsection (h)—

(A) in paragraph (1), by striking ''subsection (a)(2)'' and inserting ''subsection (a)''; and

(B) in paragraph (2), by striking ''subsection (a)(2)'' and inserting ''subsection (a)'';

(4) by redesignating subsections (i), (j), and (k) as subsections (j), (k), and (l), respectively; and

(5) by inserting after subsection (h) the following:

''(i) MOTORCYCLE HELMET USE LAWS.—

''(1) FISCAL YEAR 2009.—If, at any time in fiscal year 2008, a State does not have in effect and is not enforcing a law that makes unlawful throughout the State the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet, the Secretary shall transfer 1.5 percent of the funds apportioned to the State for fiscal year 2009 under each of subsections (b)(1), (b)(3), and (b)(4) of section 104 to the apportionment of the State under section 402.

''(2) FISCAL YEAR 2010 AND THEREAFTER.—If, at any time in fiscal year beginning after September 30, 2008, a State does not have in effect and is not enforcing a law described in paragraph (1), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of subsections (b)(1), (b)(3), and (b)(4) of section 104 to the apportionment of the State under section 402.

''(3) APPLICABLE PROVISIONS.—Paragraphs (3), (4), and (5) of subsection (h) shall apply to obligations transferred under this subsection.''.

Mr. LAUTENBERG. Mr. President, I offer this amendment to address motorcycle safety on our roads. In 1995, Congress repealed the motorcycle helmet law, which I authored in 1991. Since the law has been repealed, motorcycle deaths have nearly doubled, and my amendment would simply reinstate the helmet law.

Head injuries are one of the leading causes of death in motorcycle crashes. Under my amendment, States that do not require motorcycle riders to wear helmets would have funds, but they would have them shifted to motorcycle safety programs.

Last month, the Department of Transportation released preliminary findings that over 3,900 people were killed in motorcycle crashes last year. This is almost double the number of motorcycle crash victims of 10 years ago when the Federal helmet law was repealed.

If we look at the chart, we see what happened since 1996, the year of operation after the law was repealed. We had a much smaller number, and it grew on a regular pattern up to 2004, the last recorded year.

This is not just a matter of more riders on the roads. The rate of deaths per mile traveled has almost doubled as well. We have learned an important lesson from this data: Helmets save lives. Repealing helmet laws have led to more deaths.

By coincidence, I had a talk with one of our colleagues before when we were voting on the previous amendment. He recalled for me the fact that he had a motorcycle accident. During the time of the fall, he said, as he bounced around the pavement, he thanked the Lord that he was wearing a helmet that had a face piece to it. It saved him from what they said would have been almost instant death.

Funny enough, when people look at me and they see the white hair, they can't believe I am an expert skier, having done so for 59 years. I have two children who are competitive skiers, one lives in Colorado, and I have a granddaughter who is on her way to becoming a competitive skier. We are skiers. Skiing is in our blood, and we ski fast and hard. I had a fall 2 years ago, 2 days after I bought a helmet. I hadn't worn it for the 50-some years before that. When I fell, I fell so hard I did a tumblesalt in the air—and I'm not an acrobat—and I landed on my head. I didn't realize, for a month, I was hurt, until my vision started to blur and my balance was unsteady. I was rushed to a hospital—I was with my wife in New York City—and the next day on an operating table and had what they call a hematoma. Doctors had to go on two sides of my head with

a drill or whatever they use to get there and drain the fluid that had gathered. I thank God regularly that I am in the condition I am after that kind of accident. But the difference was that helmet. I had the helmet 2 days.

I went back to the ski shop, and I said: I thought this was supposed to prevent my getting hurt. He pointed to a tiny crack in the helmet, and he said to me: If you hadn't been wearing this helmet, that crack would have been through your skull, and we would not have been here talking about it. So I am a confirmed user of helmets.

I had been on the board of a hospital in New Jersey and worked very closely with our principal medical school and its hospital. I talked to the emergency room physicians. I know that much of the head and neck trauma that comes about comes about as a result of motorcycle accidents.

A Transportation Department survey showed that from 2000 to 2002, helmet use among motorcycle riders dropped from 71 percent to 58 percent nationally. They stopped using helmets, mostly.

The Transportation Department found that in those States where universal helmet laws had been repealed, helmet use plummeted from 99 percent to 50 percent. In other words, where helmet laws are on the books, almost every rider wears a helmet. Where there is no such law, only about half of the riders are protected against head injury.

My amendment, to be simply understood, would reinstate the minimum safety standard which first was enacted in 1991. This is not a matter of ideology or so-called States' rights. It's a matter of doing what is right. Helmets save lives. Universal helmet laws work.

No matter what some people might suggest, riding without a helmet is not a victimless indiscretion. Motorcycle crashes burden our health care system and the taxpayers unnecessarily. The Transportation Department estimates that unhelmeted riders involved in crashes cost taxpayers $853 million in the year 2002 alone.

Riders without helmets are much more likely to suffer brain injuries, which obviously are often slow healing, with long-time hospitalization. It costs twice as much to treat a patient who does have brain injuries.

I don't think taxpayers ought to be saddled with the costs of motorcyclists who sustain serious injuries because they want to feel the wind in their hair. I urge my colleagues to vote to help save the lives of so many of their constituents who are motorcycle enthusiasts. I once rode a motorcycle. In my earliest moments, I slipped and fell and picked gravel out of my legs for about 2 weeks thereafter. But we don't want to stop the sport. We want to spare the families of the motorcycle riders and their friends from needless loss and to spare taxpayers from bearing the costs of risky behavior.

I want to read a comment that we received. It is by Joe A—to protect his testimony. This is his testimonial to his NXT helmet.

> On May 13th, 2004, I was riding my Harley through the small college town of Newark, Delaware, when a distracted student in the oncoming lane decided to make a left turn about 15 feet in front of me. I was going about 25 miles per hour and she appeared to be doing the same. In an instant, I collided head on, flew off my bike and into her windshield.
>
> I did a 'head plant' which took out the windshield, rolled me over the car and onto the roadway beside the car. This left about a 4-inch gouge in my helmet but no serious head injuries. The paramedics were amazed . . . that I was able to carry on a lucid conversation with them. Thanks to your superior product, I was able to walk out of the hospital about an hour and a half later with no serious injuries.
>
> My doctor told me that without my helmet I would have been dead or had severe brain injury and it's an impressive fact that I'm able to write this e-mail and send pictures three days after the accident. I have no doubt that without your helmet the outcome would have been very different for me.

Mr. President, it makes sense to do what we can to protect the public. Again, this is not telling anybody that they should ride or should not ride. We say, when you ride, don't spend my money, please. Don't burden the Medicare or health care insurance programs with your lingering injury or your death or other family problems. Don't burden us. You have no right to do that.

I urge my colleagues to vote for the amendment. It promotes the minimum safety standard for motorcycles, significant funding which can be used for other health care essential studies on childhood diabetes, asthma, autism, and many other afflictions that wreak havoc on families.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I thank the distinguished Senator from New Jersey for bringing his amendment to the Senate. We have been urging Members to bring their amendments to the Senate. I thank him also for the very thoughtful, sincere, and articulate way he expressed and explained his amendment. I disagree, but I know he has strong feelings, and we are anxious to get a vote on his amendment.

It is my hope—and I know the ranking minority member, Senator JEFFORDS, agrees—to get as many of these votes lined up for, perhaps, stacked votes. We do not have a time yet, but I assume that would be acceptable with the author of this amendment to stack these votes with perhaps some other amendments.

Currently, 21 States and the District of Columbia have helmet laws; 26 States have limited helmet laws, including my State of Oklahoma. Ours are for 17 and under. Only four States, as I understand, have no helmet requirement.

As recently as last year when we were discussing the highway bill, the U.S. Department of Transportation released a statement in which they said:

> The administration opposes sanctions and withholding State funds, both of which would jeopardize important State level safety programs in infrastructure maintenance programs already in place.

Let me share a personal experience. Many years ago, back in the middle 1960s, I believe 1967, my first year in the State legislature, my first act in January of 1967, I came to Washington, DC, to testify before the Environment and Public Works Committee chaired at that time by Jennings Randolph of West Virginia. I was impressed with myself coming up to testify before this lofty committee that I now chair.

I was protesting Lady Bird's Highway Beautification Act of 1965. The reason was it was withholding funds, our funds, in order to accomplish a policy which we could agree or disagree on.

I have to admit to the Senator from New Jersey that I come from a little bit of a prejudiced perspective because I would be concerned about mandates for quite some time.

The highway bill is important for addressing real transportation infrastructure needs, but I question it is a place to spend a lot of time for other policies.

I will share with the Senator from New Jersey a study done last year of the California Motorcycle Safety Program, designed by Dr. John Billheimer, completed in 1996, that found that rider training dramatically reduces accidents and thus eliminates injuries and fatalities. Specifically, the study stated:

> An analysis of statewide accident trends shows that total motorcycle accidents have dropped by 67 percent since the introduction of the California Motorcycle Safety Program with a drop of 88 percent among those under 18-year-old drivers.

There is much that can be done to dramatically reduce fatalities. I can recall we were debating a motorcycle helmet law in the State senate many years ago in the 1970s when testimony came forth that a helmet will impair one's vision to some degree, that there are sometimes accidents that have occurred because of the restriction. I know there have probably been studies on that, but it is something to be considered.

I fundamentally oppose this type of approach. I know consistency is not always something we have in this Senate, but it is consistent with my feelings over the last 30 years in addressing this type of situation.

I believe the Senator from New Jersey has every right to get a vote to measure the Senate, so at the appropriate time it would be my intention to table the amendment, call for the yeas and nays, and stack this with perhaps some of the other amendments, maybe the amendment of Senator HARKIN,

who is prepared to offer his amendment now.

Mr. LAUTENBERG. Mr. President, I was heartened at the beginning of the remarks by my colleague from Oklahoma and couldn't wait to hear the rest of it. Then I realized I could have waited.

My colleague is an adventurous fellow who sometimes flies airplanes without fuel. He is quite a daredevil. I support some of the enthusiasm he has for a chance-taking. It is amazing I got as far as I did in life, but here I am with a few broken things here and there.

In all seriousness, there is no transfer of funds; there is no loss of funds. Any money that is not used to promote helmet wearing is used for motorcycle safety within that same State. I was pleased to hear there is a way to protect lives besides using helmets. But when we saw what happened when the helmets came off, they were not blinded by any helmet problems for the most part, they were just killed.

The United States DOT has a helmet design that will not impair vision but will promote safety. That is the critical issue.

I hope between now and the time a vote occurs that the intelligent leader of the committee, who cares about people, will see a difference in view than that which was initially expressed.

I yield the floor.

Mr. INHOFE. Mr. President, again, I am hoping that Senator HARKIN is on his way and is prepared to offer his amendment. I look forward to considering that.

In the meantime, let's keep in mind we now have a limited period of time in which to work. The time is here. We are open for business. We want to have the amendments sent to the Senate. We invite our Members to do so.

In the meantime, I will reconfirm and restate one of the reasons for the urgency of this bill. Not only is this one of the largest bills of the year, it is thought by many to be the most important bill we will consider in that it is a matter of life and death.

We have core safety programs. If we were operating on an extension we do not have in this bill, we will not have the core safety programs and people will die. It is as simple as that, if we do not get this done.

Consequently, it is always worth repeating how important it is to get the bill completed and what would happen if we do not. We are in our sixth extension. This extension expires May 31. On May 31, if we do not have something in place, we have another extension. If we have an extension as opposed to a bill, there is not a chance to improve the donor status. There are many States that are donor States, like my State of Oklahoma. Under this bill as it is now, the minimum donor State of 90.5 percent would be increased to 92 percent, which does not sound like a big increase, and is not as large as I would like, but it means hundreds of thousands of dollars to each State.

Without the bill, we will not have that. We will just have an extension of what we have today at 90.5 percent. We would have no new safety core programs if we are not able to pass this bill.

Again, we have talked about the difficult job in putting together a fair formula. The fair formula is one that no one thinks is fair. Perhaps we have a fair formula as a result of that type of analysis. One of the factors in the 20-some factors of a formula is the fatalities of the States. My State happens to be a high-fatality, per capita State, so there is a consideration in the formula for that. If we do not pass the bill, we will not have any of the safety programs.

Right now, we have some streamlining provisions that took us—and I am sure the distinguished ranking minority member, Senator JEFFORDS, would agree with this—we spent 3 years coming up with what we can do to protect the environment and at the same time streamline the process of building roads so we do not come into delays that are costly delays and use up our mile dollars. We have done that. We have come to a lot of compromises.

It is kind of interesting, I think those of us on the committee, who all supported these streamlining provisions, did not really like the way they turned out. I thought they were not strict enough. Some thought they were too strict. Nonetheless, they are there. But if we do not pass a bill, we do not have them, so they are still going to be stumbling along trying to build roads with all kinds of obstacles out there that are obsolete.

If we do not pass a bill, we will not have the ability to use the innovative financing that is given to the States. This bill, for example, has recognized something that I believe is very important; that is, we should expand the opportunity of the States to have more chances to get involved, more opportunities to use innovative financing methods that may work. My State of Oklahoma is different from the State of Vermont, for example. What works in Vermont may not work in Oklahoma. But we recognize that. This bill will allow the States to be able to start being creative in expanding their ability to pay for more roads in a way that is a custom that would be workable within their States. That is a very important aspect of this legislation.

If we are operating on an extension and do not have a bill, we are not going to have this program called the Safe Routes to School. The Safe Routes to School Program is one that is certainly supported strongly by the Senator from Vermont, as well as many of the Members of the other body. This is something that many people feel very strongly about, that some people think is one of the most important parts of this bill: the Safe Routes to Schools. This will save young lives in America. If we do not pass this bill—and we are not going to pass it if we are working on an extension—young lives could very well be lost.

One of the biggest problems we are having right now—I know my State of Oklahoma is not a lot different from other States—is we are sitting back there with the department of transportation, we are sitting back there with highway contractors who have the labor set up, all ready to go to work, all ready to repair roads, to build roads, to build bridges, and there is no certainty. They do not know for sure we are going to pass a bill. If we do not pass a bill, we may be on a 1-month extension, we may be on a 2-week extension, we may be on a 1-year extension. There is no way we can plan ahead and get the most from our dollars if we do not have a bill. There would be 5 years remaining on this bill for people to be able to plan for the future. So that certainty is very important.

A lot of the States are border States. My State of Oklahoma is not a border State, but a lot of them are. They have to deal with the NAFTA traffic. This bill has a borders program as well as a corridors program built into it to take into consideration some of the unique problems that come with the expanded traffic from trade. If we do not pass a bill, we will not have any help for these people. If we do pass a bill, we have provisions to be helpful to them.

The bill calls for a national commission to explore how to fund transportation in the future. There are some ways, if you look way down the road, maybe 5 years from now or 10 years from now, where maybe—just maybe—we can do something different for a change.

We have said several times here, and others have mentioned it, that this interstate highway program initially came into being many years ago, back in the 1950s, when Dwight Eisenhower was President of the United States. He observed during World War II, when he was General Eisenhower, that he was not able to get the troops and supplies moved around the country, to get them in place, to be shipped over to fight our battles.

When he became President, what is the one thing everybody remembers about Dwight Eisenhower? They remember the roads program, the highway program. It was funded in a way with taxes the same way we are funding it today. So we are talking about a half century, nearly, that we have been funding this program the same way. With this bill, we have established a commission that will look at new ways of partnering, new, creative ways of funding roads.

I can tell you, many people have come to our committee—we have had hearings on this—and they have talked about how much better we can do it if we just have a chance to get away from this mold we have been living in, the methods we are using and have been using for the last half century. If we just operate on an extension, we do not have a chance to do any of that.

This bill is more than just a highway bill. We have talked about bridges and highways a lot. But this is an intermodal transportation bill. A lot of people do not realize it, but my State of Oklahoma is actually a navigable State in terms of barge traffic coming in and out of the State. We have chokepoints with regard to train travel, channel travel, air travel. This bill addresses those chokepoints. At the present time, without this bill, that is not going to happen.

Lastly, and this is probably the most important thing, the bill has firewall protections to make sure people—I have always thought of this as a moral issue. If somebody is driving up to the pump and he or she pays that tax, I never hear anyone complaining about the high taxes on motor fuel because they recognize and believe all that money is going to go to road improvement, to new roads and new bridges. But, in fact, that is not the case because, like any trust fund, the propensity of people in elected positions—whether it is State or Federal—to spend the taxpayers' money is insatiable. They will go and rob these trust funds, whether it is the Social Security trust fund, the highway trust fund, or any of the other trust funds we have, and put it in other programs. It is when nobody is looking. Well, we have firewalls in this bill that would preclude that from happening.

One of the things I liked about the bill we had last year was that we changed all those provisions where they had been using trust fund money to support policies that have nothing to do with transportation. We are, to a great extent, going to be doing that with this bill, too.

So the urgency of passing this bill is upon us. We have to do it this week. It would be Monday at the latest, but this week, I would say, in order to get it to conference, come back from conference, have the conference report adopted in both the House and the Senate, and then signed by the President. We can do that if we move expeditiously now, but if we do not, it is not going to happen. We have a May 31 deadline. What is today? May 11. Today is May 11. So we have 20 more days to get this all the way out of the Senate, into conference—of course, the House has already passed the bill, so they are waiting for us now—have it considered in conference, and then have it sent back here. That is not much time.

Things do not happen very quickly around here. But I know Senator JEFFORDS and I will do everything that is necessary in that conference to make sure we come out with a good bill, get that bill back here, passed the House, passed the Senate, and to the President's desk, to have a highway bill. If we do not do it, none of these 10 things I mentioned are going to happen—none of them.

There may be parts of the bill you don't like. There are parts of the bill I do not like. But I hope people realize that just operating on an extension, after we are on our sixth extension now, is no way to do business. We are here to do a better job for the American people.

Hopefully, some people will be coming down to the Chamber.

I yield the floor to Senator JEFFORDS.

The PRESIDING OFFICER (Mr. COBURN). The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I thank again Senator INHOFE and Senator BOND for their leadership on this bill. I am glad to be here on the Senate floor continuing to debate this important legislation.

This managers' package we have before us today will increase the funding in our legislation $11.2 billion and ensures that all States will have the resources necessary to improve their highways, roads, and bridges.

This package will be the catalyst that helps get this bill completed the way it I should be—fully funded. I sincerely thank Senators GRASSLEY and BAUCUS for their tremendous efforts in crafting the finance title of this proposal.

This package will create jobs. It will save lives. It will reduce travel time. And it will improve the quality and structure of our Nation's surface transportation system.

Just this week, the Texas Transportation Institute at Texas A&M University released its annual Urban Mobility Report. This highly respected report once again tells us we need to do better when it comes to transportation in this country. The report tells us that traffic congestion delayed travelers 79 million more hours—79 million more hours—and wasted 69 million more gallons of fuel in 2003 than in 2002.

The report tells us that overall in 2003, there were 3.7 billion hours of travel delay and 2.3 billion gallons of wasted fuel, for a total cost of more than $63 billion. But this bill is about more than reducing traffic congestion. The U.S. Bureau of Transportation Statistics says there are approximately 45,500 transportation-related fatalities per year, 94 percent of which occur on highways. That is because over a quarter of our interstates remain in poor or mediocre condition. Fourteen percent of our bridges are structurally obsolete. This is unacceptable. Something must be done.

That is what we are trying to do here today. We have worked very diligently to reach a compromise that will move us forward in safety, commerce, environmental protection, and congestion reduction.

I encourage all Senators to come to the floor and offer their amendments sooner rather than later. Let's get this bill done so our States can get started with their critical work. Let's get this bill done this week so we can move it to conference with the House as soon as possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I thank the Senator from Vermont for his excellent statement. I agree with all of it.

I see the Senator from New Jersey is not in the Chamber, but let me make one comment. When I was talking about the withholding of funds and the Federal mandates, he is accurate in the fact that funds would not be withheld. It would mandate that 3 percent of the money of the portion of funds that would go to his State would be taken from the surface transportation program, the National Highway System, and the interstate maintenance programs. That is the problem I have. In a way that is withholding money. That is a mandate that is backed up by withholding funds.

It is my understanding we have two Members who are due to bring their amendments. We encourage them to come.

I yield the floor and 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. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 652 TO AMENDMENT NO. 605

Mr. DORGAN. Mr. President, I have an amendment I would like to have considered. My amendment is No. 652, which I have filed and is at the desk.

The PRESIDING OFFICER. The pending amendment is temporarily laid aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 652.

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

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

The amendment is as follows:

(Purpose: To provide for the conduct of an investigation to determine whether market manipulation is contributing to higher gasoline prices)

At the end of chapter 3 of subtitle E of title I, add the following:

SEC. 15___. INVESTIGATION OF GASOLINE PRICES.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Federal Trade Commission shall conduct an investigation to determine if the price of gasoline is being artificially manipulated by reducing refinery capacity or by any other form of market manipulation.

(b) REPORT.—On completion of the investigation under subsection (a), the Federal Trade Commission shall submit to Congress a report that describes—

(1) the results of the investigation; and

(2) any recommendations of the Federal Trade Commission.

Mr. DORGAN. Mr. President, first, we are deliberating in the Senate about

a highway bill. I appreciate the work the chairman of the committee and ranking member have done on this piece of legislation. It has been a long and tortured process to get this piece of legislation to the floor of the Senate. While I may not agree with every single line in the bill, I admire their work. I think their work is commendable, and it will advance this country's interests. For that reason, I intend to support the legislation.

I think with respect to this country's future, its economy, future opportunities in expanding our economy, there is nothing that more quickly expands the country's economy or more quickly provides opportunity all across this country than the investment Congress makes in a program that provides for highway and bridge construction and road maintenance and repair. It is a sure way to put people to work immediately all across this country.

This highway bill has been long delayed, but now while it is on the floor, I also want to not only commend the committee for its work, I want to offer an amendment that deals with something that relates to it.

Let me discuss briefly the amendment and then describe why I want this amendment considered on this bill. My amendment simply deals with the price of gasoline and asks the FTC to, within 90 days of the legislation being enacted, conduct an investigation of gasoline prices in this country. Let me describe a bit of the background for this. I don't allege there is corruption, price fixing, or collusion. What I do know is this: When big companies get bigger and more companies become fewer companies, there is a capability to influence the marketplace in a significant way. I chaired the hearings in the Senate that investigated the Enron situation. Now, having sat in the chair investigating what Enron did with respect, not to gasoline, but with respect to electricity sales on the west coast, the creation of strategies called Death Star, Fat Boy, Get Shorty—all of which were strategies to literally steal from the pockets of people living on the west coast. They bilked people out of billions of dollars by manipulating and overpricing with respect to the electricity market. We know that now and we also know that some executives from that company are on trial, about to go on trial, or have finished their trials, and some have been sentenced to 10 years of hard tennis at a minimum security prison. Others will get a stiffer penalty. It was wholesale stealing from the American people. Why? One, because they could; and, two, because there are people who are corrupt in their hearts engaging in these practices.

I don't allege the same exists with oil. I don't have any idea with respect to oil and the price of gasoline. I understand that the circumstances with oil are complicated. Sixty percent of the oil we use in this country—incidentally, the increased usage substantially is for transportation—comes from off our shore. The pricing for oil coming from the spot market relates to supply and demand, I am sure, but the supply largely comes from Saudi Arabia, Iraq, Kuwait, Venezuela, and others. Now, we are really fooling ourselves if we think it is not holding America hostage and our economic future hostage with 60 percent of our oil coming from off our shores and most of it coming from troubled parts of the world.

If, God forbid, terrorists should interrupt the flow of oil into this country tomorrow night, our economy would be belly up very quickly. So that calls for and begs for a new energy policy, instead of simply saying that our exclusive energy policy is digging and drilling, which we must do; but if that is our exclusive policy, that is a ''yesterday forever'' policy. We need a new energy policy on the floor of the Senate.

I also think even as all of these events are occurring—the price of oil increasing, the spot market showing the price of oil is $50 or $52 or $55 a barrel, and the price of gasoline is increasing at the pumps, and you drive up to a gas pump someplace and somebody is driving a 6,500- or 7,000-pound car, perhaps a humvee, and you wonder a little bit about how all this works. When I drive up next to a humvee and everybody has a right to drive a humvee I think of the Latin term, ''totus porcus.'' I am not sure why I think of that. When somebody sits there with a 7,000-pound vehicle, with one person in the vehicle going to work, you wonder about that. The marketplace probably takes care of some of that, although somebody who is going to buy a humvee probably doesn't care much about the price of gasoline.

The price of gasoline is an interesting phenomenon in our country. As the price of oil goes up, and we hear about it on the news, all of a sudden, that day or the next day the price of gasoline goes up with a blink of an eye, following the price of oil. Then the price of oil comes down a bit, and the price of gasoline doesn't move down with quite the same rapidity. Something interesting is going on. I would like to discuss a bit of it.

Since 1990, the number of major oil and gas companies has gone from 34 to 13. The number of refining companies has gone from 13 to 7. The other day, I noticed that while we have very high prices for oil and gasoline, Exxon Oil had the highest profit ever for a corporation—record profits. So I am asking myself the question: Why should an oil company have record profits just because the price of oil is high and the price of gasoline is higher? Has the margin between those two prices changed with respect to those that are delivering it? The answer comes in the evaluation of what has happened to total revenues and to net income for the major oil companies. As we have gone from more to fewer oil companies, what we see is now, with the price of oil and gasoline in many cases at near record levels, so, too, are the profits of the oil companies. There have been profit increases year to year of 108 percent, 79 percent, 101 percent, 152 percent, 1,000 percent, 400 percent—these are the major oil companies and the increase in their profits from 2003 to 2004.

Question: Given what we know about what has happened in some areas and in some industries with respect to manipulation of supply and demand and manipulation of prices, should we not have aggressive oversight and investigation to make sure the consumer is protected? I don't have the information to come to the floor to say there is something fundamentally wrong in the pricing strategy, but there are some indications, it seems to me, that some enterprises that have now merged successfully and become larger and stronger and have better capability to be involved in affecting the market in a more deliberate way are increasing their profits because they can, not because there is aggressive and robust competition, but because they have the economic clout to do it.

I am wondering if on behalf of the American consumers we ought not have aggressive oversight and aggressive investigation.

Now, we have seen activities from very large oil companies in the Congress. The House of Representatives, by the way, just passed an energy bill saying we need more incentives for these energy companies to be exploring for more oil and natural gas, at a time when the oil prices are at a record high. Even the President says that doesn't make any sense at all. It is interesting while they are wanting more tax incentives to explore for more oil, they are busy buying up stock with extra profits. That is what they are doing: they are not putting those profits in the ground. I find that interesting as well.

I think the FTC is the appropriate agency to investigate gas prices. I think, on behalf of American consumers, we ought to take a hard look at it, and the FTC is the place to do it. I pulled up at a four-way stop sign near Mohall, ND, one day, and there was an old car in front of me, and it was well used and well worn, with the back bumper kind of askew and not much of a paint job left. It had four or five people in it, and it was belching smoke out of the back end. They had a plain, simple little bumper sticker. The bumper sticker from this old wreck of a car that is now stopped at a four-way stop said: We fought the gas war and gas won.

Well, the message from that old car, ''gas won,'' is a message I think everybody understands. We are talking about a big industry that has consolidated and merged so that there are far fewer companies, with much greater market clout, and I think we need substantial oversight. The basic consumer protection statute enforced by the Federal Trade Commission is in section 5(a) of the Federal Trade Commission

Act. It provides that unfair or deceptive acts or practices in or affecting commerce are declared unlawful. Unfair practices are defined to mean those that:

cause or are likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

In the State of North Dakota, a State I represent in the Senate, we actually drive a lot because we are a State that is 10 times the size of the State of Massachusetts. We have 642,000 citizens and we drive a lot. In fact, it is interesting; we drive almost twice as much per person as they do in New York. The average North Dakotan drives twice as much per person per year as a New Yorker, which means of course the burden of the gas tax itself is twice as high, but that is all right. We understand that. We like where we live. North Dakota is a wonderful State. But because gasoline is a significant issue for us and the price of gasoline is important for people who drive as much as we do, it is very important to us that we see that these prices are fair.

It is hard for me to understand how at a time when the oil prices have spiked and gasoline prices have risen substantially, how the profit margin has increased so dramatically for the oil companies themselves if in fact this is a competitive market. If it is not a competitive market, then I think there needs to be substantial investigation to see whether the consumers are being gouged.

Let me say again when I chaired the hearings about the manipulation of the market and the grand theft that occurred with the Enron Corporation bilking billions of dollars from consumers on the west coast, California, Oregon, Washington, and so on, it was unbelievable to see what those companies did because they could. They had larceny in their heart and they decided to profit to the tune of billions of dollars by literally stealing from consumers. As I have said before, I am not alleging that is happening here. I do not have the foggiest idea what the mechanics are for the pricing strategies or what has led to record profits for the oil companies.

All I know is the oil companies are bigger. They have more muscle. They have more capability to affect the marketplace, and I believe when there are fewer competitors and less competition, there is a responsibility on behalf of consumers to ask for a referee to look over their shoulder and see that everything is all right.

I only wish we had done that earlier in the Congress when it was quite clear that the wholesale prices for electricity charged by Enron and others in the west coast marketplace—I only wish we had been more aggressive and we had demanded the Federal Energy Regulatory Commission and others to be in there up to their neck in investigating what was going on, but the Congress was late. The Federal Energy Regulatory Commission was asleep from the neck up. As a result, there was grand theft on the west coast from those markets, particularly by the Enron Corporation. Let us not let that happen with other industries.

Again, I do not allege that is the case here. I do not have the foggiest idea what the ingredients are of these pricing strategies, but I would like the Federal Trade Commission, on behalf of the American people, to take a good hard look. So my amendment would provide that be the case 90 days following the enactment of this legislation, and we would then have the benefit of a formal Federal Trade Commission study of gasoline pricing.

I think on behalf of the American people, given this time, given these circumstances, we ought to expect that and demand that and that is what I do in this amendment.

I yield the floor, and 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. GREGG. 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. INHOFE. We are encouraging Members to come to the floor. The Senator from Iowa is prepared to offer an amendment, and another behind him. I am hoping we will be able to get these amendments so we can perhaps have some stacked votes tonight—maybe 6 o'clock or so—whenever the leadership on both sides agrees that is the appropriate time.

I will state again how significant it is we pass this bill. It will be very costly in terms of dollars if we do not get it completed. There are a lot of programs incorporated in this lengthy bill that I do not agree with and we debated them for 3 years. I had to lose some and I won some.

This is one I don't think there is one member of the committee I chair of 10 Republicans and 8 Democrats who will say they got everything they wanted. Maybe that is a sign that we did a pretty fair job. We need to have the bill passed.

We need to do what we can to avoid another extension. An extension causes all of the 10 problems I outlined a few minutes ago. There is a clear right and wrong in this case. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. 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. INHOFE. Mr. President, we do have at least one amendment, the Lautenberg amendment, that is ready for a vote. It might be that the Harkin amendment will be ready for a vote also, if the Senator can get ready in the next 30 minutes. I announce it is our intention to have a vote at 5:30, and there will be either one or two or even three votes, depending on what comes down between now and 5:30.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 618 TO AMENDMENT NO. 605

Mr. HARKIN. Mr. President, I ask unanimous consent to set aside the pending amendment, and I call up amendment No. 618 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. KENNEDY, Mr. OBAMA, and Mr. CARPER, proposes an amendment numbered 618.

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

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

The amendment is as follows:

(Purpose: To improve the safety of nonmotorized transportation, including bicycle and pedestrian safety)

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

SEC. ____. NONMOTORIZED TRANSPORTATION SAFETY.

Section 120(c) of title 23, United States Code, is amended—

(1) in the first sentence, by striking ''The Federal'' and inserting the following:

''(1) IN GENERAL.—The Federal''; and

(2) by adding at the end the following:

''(2) STATEMENT OF POLICY BY STATE TRANSPORTATION DEPARTMENTS.—

''(A) IN GENERAL.—Each State transportation department shall adopt a statement of policy ensuring that the needs and safety of all road users (including the need for pedestrian and bicycle safety) are fully integrated into the planning, design, operation and maintenance of the transportation system of the State transportation department.

''(B) BASIS.—In the case of bicycle and pedestrian safety, the statement of policy shall be based on the design guidance on accommodating bicyclists and pedestrians of the Federal Highway Administration adopted in February 2000.

''(C) REPORTS.—Not later 1 year after the date of enactment of this paragraph, and each year thereafter, the Secretary shall submit to Congress a report on the statements of policy adopted under this paragraph.

''(3) NONMOTORIZED TRANSPORTATION GOAL.—

''(A) IN GENERAL.—The Secretary shall take such actions as are necessary to, to the maximum extent practicable, increase the percentage of trips made by foot or bicycle while simultaneously reducing crashes involving bicyclists and pedestrians by 10 percent, in a manner consistent with the goals of the national bicycling and walking study conducted during 1994.

''(B) ADMINISTRATION.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish such baseline and completion dates as are necessary to carry out subparagraph (A).

''(4) RESEARCH FOR NONMOTORIZED USERS.—

''(A) FINDINGS.—Congress finds that—

''(i) it is in the national interest to meet the goals of the national bicycling and walking study by the completion date established under paragraph (3)(B);

''(ii) research into the safety and operation of the transportation system for nonmotorized users is inadequate, given that almost 1 in 10 trips are made by foot or bicycle and 1 in 8 traffic fatalities involves a bicyclist or pedestrian; and

''(iii) inadequate data collection, especially on exposure rates and infrastructure needs, are hampering efforts to improve bicycle and pedestrian safety and use to meet local transportation needs.

''(B) ALLOCATION OF RESEARCH FUNDS FOR NONMOTORIZED USERS.—

''(i) IN GENERAL.—The Secretary shall submit to Congress an annual report on the percentage of research funds that are allocated (for the most recent fiscal year for which data are available) to research that directly benefits the planning, design, operation, and maintenance of the transportation system for nonmotorized users—

''(I) by the Department of Transportation; and

''(II) by State transportation departments.

''(ii) NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM.—The Transportation Research Board of the National Academy of Sciences shall submit to Congress an annual report on the percentage of research funds under the National Cooperative Highway Research Program that are allocated (for the most recent fiscal year for which data are available) to research that directly benefits the planning, design, operation, and maintenance of the transportation system for nonmotorized users.

''(iii) DEPARTMENT OF TRANSPORTATION ALLOCATION.—Effective beginning with the third full fiscal year that begins after the date of enactment of this paragraph, the Secretary shall allocate at least 10 percent of the research funds that are allocated by the Department of Transportation for each fiscal year to research that directly benefits the planning, design, operation, and maintenance of the transportation system for nonmotorized users.

''(5) METROPOLITAN PLANNING ORGANIZATIONS.—

''(A) BICYCLE/PEDESTRIAN COORDINATORS.—A metropolitan planning organization that serves a population of 200,000 or more shall designate a bicycle/pedestrian coordinator to coordinate bicycle and pedestrian programs and activities carried out in the area served by the organization.

''(B) CERTIFICATION.—A metropolitan planning organization described in subparagraph (A) shall certify to the Secretary, as part of the certification review, that—

''(i) the needs of bicyclists and pedestrians (including people of all ages, people who use wheelchairs, and people with vision impairment) have been adequately addressed by the long-range transportation plan of the organization; and

''(ii) the bicycle and pedestrian projects to implement the plan in a timely manner are included in the transportation improvement program of the organization.

''(C) LONG-RANGE TRANSPORTATION PLANS.—

''(i) IN GENERAL.—Except as provided in clause (ii), a metropolitan planning organization described in subparagraph (A) shall develop and adopt a long-range transportation plan that—

''(I) includes the most recent data available on the percentage of trips made by foot and by bicycle in each jurisdiction;

''(II) includes an improved target level for bicycle and pedestrian trips; and

''(III) identify the contribution made by each project under the transportation improvement program of the organization toward meeting the improved target level for trips made by foot and bicycle.

''(ii) APPLICATION.—Clause (i) does not apply to a metropolitan planning organization that adopts the design guidance described in paragraph (3)(B) for all transportation projects carried out by the organization.

''(D) LOCAL JURISDICTIONS.—A metropolitan planning organization described in subparagraph (A) shall work with local jurisdictions that are served by the organization to maximize the efforts of the local jurisdictions to include sidewalks, bikepaths, and road intersections that maximize bicycle and pedestrian safety in the local transportation systems of the local jurisdictions.''.

Mr. HARKIN. Mr. President, the amendment I am offering, on behalf of Senators KENNEDY, OBAMA, CARPER, and myself, calls for several simple adjustments to current practices at the Federal, State, and local level. The costs are minor, but the impact on safety for those who walk and ride bikes would be large. With the safety improvements that could result from this amendment, I believe we could increase pedestrian and bike traffic, and we could increase exercise to the benefit of American's health. We can reduce traffic congestion, and we can provide for safer travel for those who want to walk or ride a bike.

At the outset, I want to acknowledge that there are funds in the bill for increased bike paths and trails. We have kept the enhancement money. That is all well and good. I don't know the exact amount of money, but there is a quite a bit involved. The problem is there is nothing in current practice that requires State departments of transportation or metropolitan planning organizations to integrate in their planning upfront for bike paths and sidewalks when they are planning highways. Again, I think a lot of the good money for bike paths and trails will be used to redo and retrofit what they should have done in the first place. That is what we always seem to be doing—we'll fix it up and add something later on. That always costs more money.

What this amendment does is it says: Let's have them at the initial planning stage integrate into their planning sidewalks and bike paths.

The fact is, our current transportation system has been engineered in a way that is, in many cases, unfriendly and often very dangerous to nonmotorized travel. Again, my amendment promotes Federal, State, and local actions to make walking and biking safer and to increase the total number of walking and bicycling trips.

Specifically, the amendment requires each State to adopt a ''complete streets'' policy to accommodate bicyclists and pedestrians by ensuring that all users are considered when communities are built or modernized. While studies show that Americans would like to bike and walk more, many roads do not have sidewalks or bike paths, making them dangerous for pedestrians and bike riders. In many cases, traffic lights do not allow enough time for the elderly or people with disabilities or children to safely cross busy intersections. Meanwhile, we are constructing new housing developments without sidewalks. Go out and take a look at some of the new housing developments being added in any State. A lot of times there is not even a sidewalk. How can you ask kids to walk to school if they don't have a sidewalk?

My wife and I get up every morning. We have a mile route that we walk. We have sidewalks for part of the way, and there aren't any sidewalks for the rest of the way. Again, it is about getting this integrated in the initial planning.

While studies show that Americans would like to bike and walk more, many roads don't have sidewalks or bike paths. It is dangerous for pedestrians. We are building roads without bike lanes. Quite frankly, we are heading in the wrong direction. Quite frankly, to promote more healthy living, we must promote people walking or biking more. I will have more to say about that in a minute.

Experts I talk to tell me that even a modest increase in pedestrian and bike traffic will get some cars off the road. That can have a significant positive impact on traffic congestion and gridlock. Research shows that often a surprisingly small increase in the number of cars can make the difference between a smooth flow of vehicles and a time-wasting traffic jam.

According to the U.S. Department of Transportation, the number of trips that are taken that are 1 mile or less is about one out of four. In other words, about 25 percent of all trips taken are 1 mile or less. Nearly half of all the trips taken in this country are under 5 miles. So it wouldn't take a huge shift to have an effect on traffic congestion. The path to safer travel on foot or by bike is also the path to a smarter, healthier, more efficient vehicle transportation system.

Each of the provisions in my amendment is intended to help us move forward toward safer travel for people in vehicles, pedestrians, for people who use bikes or people who use wheelchairs, or for people simply trying to cross a road safely in a neighborhood.

When we debate the highway bill, we typically talk about the Nation's infrastructure deficit, about jobs and economic competitiveness, the movement of goods, and other broader transportation goals. But we neglect other matters that are of real concern to people all across America in terms of transportation. For example, what are we doing to improve the safety of pedestrians and bicyclists?

In the Washington, DC, area we have recently experienced a rash of pedestrian fatalities. All across the country

bicyclists put their lives at risk on roads that make no accommodation for nonmotorized traffic. No one denies that over the years we have built a transportation system that neglects and endangers nonmotorized travel. Again, this costs us dearly in terms of needless loss of life or permanent disabilities caused by accidents.

It also has other consequences. When we give people no alternative to using their cars, they use their cars. So we add more and more vehicles to our roads and highways, 25 percent of which are used for trips of less than a mile. This translates into traffic delays, congestion, often gridlock. We simply must give more attention to the safety of pedestrians and those who use bicycles or who walk or who use wheelchairs.

It is pretty shocking when we look at the statistics. Our Federal system for tracking fatalities, known as FARS, tells us that during the decade from 1994 to 2003, nearly 52,000 pedestrians were killed in traffic accidents in the United States. During the same 10-year period, more than 7,400 bicyclists were killed. Though the data is less reliable with regard to injuries, we know the number of nonfatal injuries ran into the hundreds of thousands during that same 10-year period.

In 2003, the most recent year for which we have data, nearly 5,000 pedestrians and more than 600 bicyclists were killed in the U.S., again, with many more thousands injured. Fully 13 percent of all transportation fatalities are pedestrians and bicyclists—13 percent. That is a rate far in excess of the share of trips taken by pedestrians and bicyclists. The bottom line is it is disproportionately dangerous to be a pedestrian or bicyclist in the U.S. This is one big reason why people are opting not to walk or ride a bicycle. Instead, they are getting in their cars and they are contributing to traffic jams. Again, about 25 percent are going less than a mile, and over half of the time they are going less than 5 miles.

The journey to work data in the 2000 census tells a dismal story. Compared to 1990, despite a big increase in population, the number of people who walked to work fell by almost three-quarters of a million—727,000, to be exact. In 1990, 3.9 percent of Americans walked to work. Ten years later, in 2000, that had fallen to 2.9 percent—a 25-percent decline in the number of Americans who walk to work, in a 10-year period of time.

These various statistics tell us that many fatalities and injuries to pedestrians and bicyclists are preventable if we make the safety of nonmotorized travel a higher priority, and that is exactly what my amendment is intended to do, to put it into the planning stage and make it a higher priority. This amendment, I guess you could say, is also designed to significantly reduce the number of car trips taken.

As I said, consider that trips of a mile or less represent the highest share of all car trips we make every day—a quarter of all of those trips. This means there is a huge, untapped potential to shift a significant portion of these short-distance trips to foot or bicycle, if we make some modest adjustments and if we step up our focus on safety.

A 2003 transportation research board study showed that residents of neighborhoods with sidewalks were 65 percent more likely to walk than residents of neighborhoods without sidewalks. That kind of makes sense. As I said, my wife and I take a mile walk in the morning, and we have sidewalks part of the way, and part of the way we are out in the street. Fortunately, there is not a lot of traffic at that time. More than once, we have been walking down the street where there are no sidewalks and you don't hear a car coming and they slip by you. I have often thought what if I happen to step one way or the other while walking and do not hear that car coming. That is why people don't walk more.

A study in Toronto documented a 23-percent increase in bicycle traffic after the installation of a bicycle lane. Think about that. They put in a bicycle lane and there was a 23-percent increase in bicycle traffic because people are more safe. They can travel on a bicycle and know they are not going to get hit. As a Senator who is a chief sponsor of the Americans with Disabilities Act, which we passed 15 years ago, I can testify that stepped-up attention to pedestrian improvement and access will be enormously beneficial to people with disabilities and also to our growing population of seniors.

Right now, about 85 percent of bus and rail users get to the bus stops and subway stations on foot. Many are people with disabilities. And seniors have no choice but to rely on costly paratransit services; they cost a lot of money. A lot of times we pay for it out of taxpayer dollars. We can reduce those costs by building new walkways and improving the existing walkways.

I have something here that was put out by the National Association of County and City Health Officials called Public Health and Land Use Planning and Community Design.

It says here that a Texas study—that is the State I referred to earlier—found that for three out of five disabled and elderly people, there are no sidewalks between their homes and the closest bus stop. I will repeat that. A Texas study found that for three out of five disabled and elderly people, there are no sidewalks between their homes and the closest bus stop.

One of the reasons we passed the Americans with Disabilities Act was so more people with disabilities would get into the workforce. More often than not, they rely on a bus to get there. How are they going to get to the bus stop if they don't have a sidewalk on which to even get to the bus stop?

Over 55 percent of all pedestrian deaths occur in neighborhoods that are often designed with no sidewalks or otherwise inadequate pedestrian accommodations. So, again, in terms of helping people with disabilities make sure they can get to a job, or get to shopping, or whatever they need to do, they rely upon transit services, buses. But if they cannot even get to the bus stop, what good is it?

Over the last two generations, we have seen dramatic changes in how children go to school. As recently as 30 years ago, up to 70 percent of children were walking or riding bikes to school. Outside of every school you would see bicycle racks loaded with dozens of bikes. Not anymore. Today, nearly 90 percent of our kids are traveling to school in vehicles, mostly buses. But if you checked the high school parking lots, you know it is cars, too. In addition, a growing number of parents are driving their kids to school, putting further stress on the roadways during the morning rush hour. Again, the logical alternative is to provide safe, convenient options to encourage children to walk or bike to school.

I was saying earlier to Senators on the floor, I remember my own two daughters, when they went to public school out in Virginia. We live about a mile from school. Well, there was a sidewalk about a third of the way, and about two-thirds of the way there was no sidewalk. It was a busy thoroughfare. How are you going to let them bike? You are not going to let them walk. So they got a car to drive a mile. I would not let our kids walk on that street and neither would our neighbors. Again, they will come along later and retrofit a sidewalk and that will cost more money, or they will put in a bike path later. Why don't we do it up front, get the planning done up front?

That is what this amendment is all about. Our focus in a transportation bill, I believe, should not strictly be on moving vehicles. We should be more broadly focused on moving people and making it possible for more people to move themselves by foot or by bicycle. For every American who opts to get to work, school, or the grocery store by foot or bicycle, that is less costs for road building and maintenance, zero contribution to traffic congestion, zero costs in terms of pollution and environmental degradation. Every walking and bicycle trip that substitutes for a car trip, especially during rush hour, makes a big difference.

In local situations, where we can encourage hundreds or thousands of people to shift to walking and bicycling, this can have a dramatically positive impact on the transportation system.

So improving and expanding sidewalks and bike paths is not only about safety, it is about maximizing the performance of our transportation systems. Again, the good news is, to make a positive difference, large numbers of vehicles do not need to be moved off a congested roadway. Just some of them need to be moved. It is the incremental user that spells the difference between

free-flowing traffic and time-wasting congestion, and that is why any thoughtful, effective transportation policy for this Nation must aim for at least modest gains in walking and bicycling.

So again I have talked about how, by investing in sidewalks and bike paths, we can reduce the stresses on our transportation system. I have also talked about how this can improve safety for pedestrians and bikers. There is one other huge benefit that, by itself, would justify passing this amendment. Simply put, by encouraging more Americans to spend more time walking and biking, we can have a major positive impact on their health and their wellness. We can reduce the incidence of obesity and chronic diseases. This, in turn, will lead to savings in health care costs, including Medicare and Medicaid.

Ninety million people in the United States are living with chronic diseases, and many of these can be prevented through changes in lifestyle—for example, by eating nutritious foods and getting plenty of physical exercise. I wish to stress, physical exercise. When all is said and done, aside from tobacco use and genetic predisposition, there are essentially two things that lead to chronic disease: Poor nutrition and lack of physical activity. They also contribute to being overweight and obese.

So we need to be doing everything possible to encourage Americans to engage in more walking and bicycling. We can begin by making it possible for more young people to walk or to bike to school.

Currently, only 8 percent of elementary schools and 6 percent of high schools provide daily physical education year round for all students. More than one-third of youngsters in grades 9 to 12 do not engage regularly in vigorous physical activity. No wonder we have an epidemic of childhood obesity. No wonder that American adolescents rank as the most overweight in the industrialized world.

And the picture is just as bleak for adults. Almost 40 percent of American adults are sedentary. In the United States, only six percent of trips are by walking or biking, compared to 49 percent of trips in Sweden and 54 percent of trips in Italy.

Research shows that the amount of time people spend in their cars correlates more strongly with overweight and obesity than income, education, gender, or ethnicity.

One remarkable study compared the health of people living in walking-and-biking-friendly cities with the health of people living in sprawling, car-dependent suburbs. The study, published in 2003 in the American Journal of Health Promotion, found that people living in counties marked by sprawling development are likely to walk less and weigh more than people who live in less sprawling counties. In addition, people living in more sprawling counties are more likely to suffer from high blood pressure. These results hold true after controlling for factors such as age, education, gender, and race and ethnicity.

One does not need a Harvard study to establish another correlation: The correlation between the decline in physical activity and skyrocketing health-care, Medicaid, and Medicare costs. We build subdivisions without sidewalks, schools without playgrounds, and cities without bike lanes, and then we wring our hands about rising rates of overweight, obesity, and chronic disease. We systematically neglect wellness, fitness, and common-sense disease prevention and we are shocked, shocked that health care costs are ravaging Federal, State, and corporate budgets.

Someone once defined insanity as doing the same old thing over and over again and expecting a different result. Well, our current health care approach is, by definition, insane. In fact, in America, today, we don't have a true health care system, we have a sick care system. If you are sick, you get care. We continue to spend hundreds of billions on pills, surgery, treatments, and disability. But we are under-funding, cutting or eliminating programs designed to keep people fit and well and out of the hospital.

We cannot go on like this. We are choking our economy. We are exploding the Federal budget. And we are, literally, killing ourselves.

Consider the obesity epidemic. Some 65 percent of our population is now overweight or obese. The incidence of childhood obesity is now at epidemic levels. Alarm bells are going off all over the place. But our Government has done virtually nothing.

And the Federal budget is being eaten alive by health care costs. It is also State budgets. It is family budgets. And it is corporate budgets.

Look at the numbers. Last year, nationally, we spent more than $100 billion on obesity alone. Medicare and Medicaid picked up almost half of that tab.

This is unwise. It is uneconomic. And, as we now know, it is totally unsustainable. If we are going to control Medicare and Medicaid costs, and private-sector health care costs, as well, we need a radical change of course. We need a fundamental paradigm shift toward preventing disease, promoting good nutrition, and encouraging fitness and wellness. This will be good for the physical health of the American people. And it will be good for the fiscal health of Government, corporate, and family budgets.

That is exactly what this amendment is about. Yes, this amendment is a step towards reducing the burdens and stresses on our transportation system. It will improve safety for pedestrians and bikers. By encouraging walking and bicycling, it will also have significant health benefits. And, as a consequence, it will help to hold down health care costs and reduce the burden on Medicare and Medicaid.

Now let me explain the specific ways that my amendment will help us to capitalize on these opportunities.

My amendment asks the Secretary of Transportation to report to Congress each year as to how the Federal research dollars provided in this legislation are advancing progress on safety and other issues related to walking and bicycling.

It also asks the Secretary to establish goals for increasing walking and bicycling, and to set milestones toward achieving these goals.

Looking into the future, it asks each State department of transportation to have a policy statement on ''complete streets,'' so that when they undertake projects funded under this highway bill, some consideration must be given to the needs of non-motorized users.

Larger metropolitan planning organizations—that is, regional transportation agencies serving 200,000 or more people—can choose to adopt a ''complete streets'' policy or satisfy certain criteria in their planning process. And these agencies must show how their long-range plans and transportation improvement programs will increase walking and bicycling. It does not require that sidewalks or bikeways be built along side rural roads or intercity roads.

Finally, under my amendment, these large metropolitan planning organizations, or MPOs, are encouraged to work with their local governments on improvements designed to increase biking and walking. In addition, the MPOs would be directed to designate a bicycle and pedestrian coordinator, a move that would be in line with a requirement placed on state transportation departments dating back to the 1991 ISTEA law.

Each of these provisions is designed to better align our current law practices with key features of the bill before us.

In the SAFETEA bill, the committee has provided for important financial commitments to bikes and trails. But we need to fully integrate the needs of pedestrians and bicyclists into the complete transportation process.

There are also provisions in my amendment regarding how we conduct Federal research activities. This is designed to expand our knowledge of effective pedestrian and bicycle safety practices, and to help our State and local partners understand the best methods and practices for addressing these safety needs.

Provisions in this ''Complete Streets'' amendment will help us to ensure that we are designing transportation projects, up front, with pedestrian and bicycle safety in mind, so we don't have to keep going back and retrofitting. So many of the programs in the SAFETEA bill involve re-doing and retrofitting what we didn't do right in the first place. In the future, as each State adopts a ''Complete Streets'' policy, this can be avoided.

Finally, this amendment attempts to set modest goals for increasing the

number of walking and bicycling trips, while reducing pedestrian and bicycle fatalities.

I believe that this modest package of policy improvements can and will make a significant difference. I am very pleased by the broad range of organizations that enthusiastically endorse this amendment.

Mr. INHOFE. Will the Senator yield?

Mr. HARKIN. Yes.

Mr. INHOFE. We are trying to lock in votes for tonight, and I was preparing for a unanimous consent request, but to do that we would have to give—I think the Senator needs to give the other side at least a couple of minutes to respond. The request would be to have two votes take place beginning at 5:30 on the Lautenberg amendment and the Harkin amendment. Could I interrupt the Senator to make that unanimous consent request?

Mr. HARKIN. Absolutely.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I ask unanimous consent that—

Mr. HARKIN. Wait just a second, Mr. President. The Senator said he wants to do what at 5:30?

Mr. INHOFE. We want to ask unanimous consent to proceed to a vote on the two amendments beginning at 5:30.

Mr. HARKIN. Well, I had a request from Senator CARPER who wanted to speak. I assume Senator BOND may want to speak. I do not know. That is only 7 more minutes.

Mr. INHOFE. I have been informed, if we are not able to get it at this time, we will not be able to have the votes tonight. I would rather have them tonight.

I ask unanimous consent that at 5:30 today, the Senate proceed to a vote in relation to the Lautenberg amendment No. 625 to be followed by a vote in relation to the Harkin amendment No. 618, with no second degrees in order to the amendments prior to the votes and with the time until then equally divided; provided further that there be 2 minutes equally divided for debate between the votes.

The PRESIDING OFFICER. Is there objection?

The Senator from Iowa is recognized.

AMENDMENT NO. 618, AS MODIFIED

Mr. HARKIN. Mr. President, reserving the right to object, I wonder if the Chairman would permit me to modify my amendment by striking lines 6 through line 16 on page 5 dealing with research.

Mr. INHOFE. Yes. There is no objection to that. That will be included by UC.

Mr. HARKIN. I ask unanimous consent to do that.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 618), as modified, is as follows:

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

SEC. ____. NONMOTORIZED TRANSPORTATION SAFETY.

Section 120(c) of title 23, United States Code, is amended—

(1) in the first sentence, by striking ''The Federal'' and inserting the following:

''(1) IN GENERAL.—The Federal''; and

(2) by adding at the end the following:

''(2) STATEMENT OF POLICY BY STATE TRANSPORTATION DEPARTMENTS.—

''(A) IN GENERAL.—Each State transportation department shall adopt a statement of policy ensuring that the needs and safety of all road users (including the need for pedestrian and bicycle safety) are fully integrated into the planning, design, operation and maintenance of the transportation system of the State transportation department.

''(B) BASIS.—In the case of bicycle and pedestrian safety, the statement of policy shall be based on the design guidance on accommodating bicyclists and pedestrians of the Federal Highway Administration adopted in February 2000.

''(C) REPORTS.—Not later 1 year after the date of enactment of this paragraph, and each year thereafter, the Secretary shall submit to Congress a report on the statements of policy adopted under this paragraph.

''(3) NONMOTORIZED TRANSPORTATION GOAL.—

''(A) IN GENERAL.—The Secretary shall take such actions as are necessary to, to the maximum extent practicable, increase the percentage of trips made by foot or bicycle while simultaneously reducing crashes involving bicyclists and pedestrians by 10 percent, in a manner consistent with the goals of the national bicycling and walking study conducted during 1994.

''(B) ADMINISTRATION.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish such baseline and completion dates as are necessary to carry out subparagraph (A).

''(4) RESEARCH FOR NONMOTORIZED USERS.—

''(A) FINDINGS.—Congress finds that—

''(i) it is in the national interest to meet the goals of the national bicycling and walking study by the completion date established under paragraph (3)(B);

''(ii) research into the safety and operation of the transportation system for nonmotorized users is inadequate, given that almost 1 in 10 trips are made by foot or bicycle and 1 in 8 traffic fatalities involves a bicyclist or pedestrian; and

''(iii) inadequate data collection, especially on exposure rates and infrastructure needs, are hampering efforts to improve bicycle and pedestrian safety and use to meet local transportation needs.

''(B) ALLOCATION OF RESEARCH FUNDS FOR NONMOTORIZED USERS.—

''(i) IN GENERAL.—The Secretary shall submit to Congress an annual report on the percentage of research funds that are allocated (for the most recent fiscal year for which data are available) to research that directly benefits the planning, design, operation, and maintenance of the transportation system for nonmotorized users—

''(I) by the Department of Transportation; and

''(II) by State transportation departments.

''(ii) NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM.—The Transportation Research Board of the National Academy of Sciences shall submit to Congress an annual report on the percentage of research funds under the National Cooperative Highway Research Program that are allocated (for the most recent fiscal year for which data are available) to research that directly benefits the planning, design, operation, and maintenance of the transportation system for nonmotorized users.

''(5) METROPOLITAN PLANNING ORGANIZATIONS.—

''(A) BICYCLE/PEDESTRIAN COORDINATORS.—A metropolitan planning organization that serves a population of 200,000 or more shall designate a bicycle/pedestrian coordinator to coordinate bicycle and pedestrian programs and activities carried out in the area served by the organization.

''(B) CERTIFICATION.—A metropolitan planning organization described in subparagraph (A) shall certify to the Secretary, as part of the certification review, that—

''(i) the needs of bicyclists and pedestrians (including people of all ages, people who use wheelchairs, and people with vision impairment) have been adequately addressed by the long-range transportation plan of the organization; and

''(ii) the bicycle and pedestrian projects to implement the plan in a timely manner are included in the transportation improvement program of the organization.

''(C) LONG-RANGE TRANSPORTATION PLANS.—

''(i) IN GENERAL.—Except as provided in clause (ii), a metropolitan planning organization described in subparagraph (A) shall develop and adopt a long-range transportation plan that—

''(I) includes the most recent data available on the percentage of trips made by foot and by bicycle in each jurisdiction;

''(II) includes an improved target level for bicycle and pedestrian trips; and

''(III) identify the contribution made by each project under the transportation improvement program of the organization toward meeting the improved target level for trips made by foot and bicycle.

''(ii) APPLICATION.—Clause (i) does not apply to a metropolitan planning organization that adopts the design guidance described in paragraph (3)(B) for all transportation projects carried out by the organization.

''(D) LOCAL JURISDICTIONS.—A metropolitan planning organization described in subparagraph (A) shall work with local jurisdictions that are served by the organization to maximize the efforts of the local jurisdictions to include sidewalks, bikepaths, and road intersections that maximize bicycle and pedestrian safety in the local transportation systems of the local jurisdictions.''.

The PRESIDING OFFICER. Is there objection to the request from the Senator from Oklahoma?

Without objection, it is so ordered.

There will be 2½ minutes per side remaining on this amendment.

Mr. HARKIN. Mr. President, I wanted to make sure the Senator from Missouri had adequate time to speak. I think I have made my case. I wanted to point out who is in support of this amendment. I have a nice chart that says it all. The American Association of Retired People, the Association of Metropolitan Planning Organizations, the MPOs, are in favor of this, as well as America Bikes, Natural Resources Defense Council; Paralyzed Veterans of America, again, because of the disability issue; America Walks; the American Heart Association strongly supports this; the American Public Health Association; the American Society of Landscape Architects; the American Planning Association, among a lot of others, are in favor of this amendment.

I hope we can adopt this amendment for a number of reasons, not the least of which is for the health and welfare of the American people and to get more people walking and biking but to get it done upfront, so when they are planning, it is integrated upfront, and that

is really what this amendment does, in essence.

This amendment asks for upfront planning, that they have a policy statement, that metropolitan planning organizations have a complete streets policy, that all of this is done upfront. Let us quit coming in and backfilling and putting in bike paths and sidewalks after the fact. Let us get it done upfront. That is really what this is all about.

I ask unanimous consent that letters from the following national organizations be printed in the RECORD: the Surface Transportation Policy Project, AARP, America Walks, the National Center for Bicycling and Walking, the Metropolitan Planning Organizations, the League of American Bicyclists, The American Society of Landscape Architects and the National Resources Defense Council, and a fact sheet from the National Association of County & City Health Officials.

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

SURFACE TRANSPORTATION POLICY PROJECT,
Washington, DC, May 9, 2005.

Hon. TOM HARKIN,
U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN: On behalf of the Surface Transportation Policy Project, I am writing to indicate our strong support for the ''Complete Streets Amendment'' you will offer during Senate debate on the SAFETEA legislation.

Your amendment proposes important, albeit modest, improvements to prompt the federal, state, regional and local partnership to embrace policy actions that will help expand travel options in the U.S., focusing specifically on improving safety for pedestrians and bicyclists.

The simple policy adjustments you are proposing are complementary to the other important provisions in the bill, notably the renewal of the Surface Transportation Program and its Transportation Enhancements Program as well as the inclusion of new initiatives to promote ''fair share'' expenditures under the Safety program and the Safe Routes to School program. These programs bolster state and local efforts to retrofit transportation facilities now in place and help ''complete our streets'' in communities throughout the nation.

Importantly, your amendment, with its emphasis on the adoption of ''Complete Streets'' policies by state transportation departments and the largest metropolitan planning organizations, will help ensure that, going forward, all users—transit users and other pedestrians of all ages, including those with disabilities, as well as bicyclists—are given full consideration in how we design new and modernize existing facilities with the federal dollars SAFETEA makes available. It also calls upon the U.S. Transportation Department to report on how research funds are deployed to facilitate walking and bicycling and prompts the Secretary to exert more leadership to make these trips safer and more frequent. Finally, it rightly focuses on the planning process in our largest metropolitan areas where a substantial majority of Americans live and work, insisting that more attention be given to plans and investments that promote broader travel options in these areas.

We strongly support this amendment and urge your colleagues to incorporate these provisions during full Senate action on SAFETEA.

Sincerely,

ANNE P. CANBY,
President.

AMERICAN ASSOCIATION OF RETIRED PERSONS,
Washington, DC. May 11, 2005.

Hon. TOM HARKIN,
U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN: AARP commends you for your leadership in offering the ''Complete Streets Amendment'' during Senate debate on the SAFETEA legislation. Safe mobility options are essential to the independence and well-being of older Americans.

Over one-fifth of persons age 65 and over do not drive. A growing number of older Americans are looking for other mobility choices, either because they have stopped driving, want to reduce their driving, or because they want to be more physically active. Walking is an important travel option for older persons and, under the proper conditions, can provide a safe, healthy transportation alternative for carrying out daily activities. In fact, walking is the most common mode of travel for older persons after the private vehicle

A recent AARP survey, however, found that one-fifth of persons age 75 and above perceived poor sidewalks, dangerous intersections, and lack of places to rest as barriers to walking. Older persons also have the highest rate of pedestrian fatalities of any age group. We believe it is important that communities provide infrastructure that allows people of all ages to have safe mobility choices, including walking and bicycling.

The Safe and Complete Streets Act of 2005 would help accomplish this goal by:

Requiring that state transportation departments adopt ''Complete Streets'' policies when constructing new transportation facilities with federal funds, using the Federal Highway Administration's policy statement on accommodating pedestrians and bicyclists as its basis;

Directing the U.S. Secretary of Transportation to promote a goal of increasing the number of pedestrian and bicycle trips, while seeking to reduce accidents involving pedestrians and bicyclists;

Focusing research on the safety of nonmotorized travel; and

Requiring metropolitan planning organizations serving a population of 200,000 or more to designate bicycle/pedestrian coordinators and include the safety needs of pedestrians and bicyclists in their long-range transportation plans.

AARP appreciates your commitment and dedication to providing mobility options for all Americans and we look forward to working with you towards accomplishment of this important goal. If you have any further questions, please feel free to contact me, or have your staff contact Debra Alvarez in Federal Affairs Department at (202) 434–3814.

Sincerely,

DAVID CERTNER,
Director, Federal Affairs.

AMERICA WALKS,
Boston, MA, May 10, 2005.

Hon. TOM HARKIN,
U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN: I'm writing on behalf of America Walks, a national coalition of more than 60 pedestrian advocacy organizations located throughout the nation, to express our support for your Complete Streets amendment to the federal transportation bill.

Andy Hamilton, President of America Walks, is out of town and asked me to let you know of our organization's support for your efforts.

Communities with sidewalks will encourage people to walk more, which will improve public health while at the same time reducing traffic congestion, particularly around schools.

Complete streets will improve safety. For decades, our roads have been designed with a single-minded focus on moving as many cars as possible as fast as possible. Your amendment will encourage communities to provide resources that enable the roads to also become safe for pedestrians, cyclists, seniors, transit users, and people with disabilities.

Completing the streets is the right thing to do. And especially as our population ages and increases in girth and Safe Routes to School programs increase in popularity, this is the right time to do it!

America Walks appreciates your focus on this very important issue. Your amendment, if passed, will increase transportation choices and safety for all users.

Sincerely,

SALLY FLOCKS,
Vice-President.

NATIONAL CENTER FOR BICYCLING & WALKING,
Bethesda, MD, May 10, 2005.

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: I am writing on behalf of the National Center for Bicycling & Walking to express our appreciation and support for your proposed Complete Streets amendment to the transportation bill.

The actions called for in your amendment are the next logical step in a process going back more than 30 years, whereby the Congress has recognized progressive trends related to bicycling and walking emerging at the state, regional, and local levels and incorporated them into our national transportation policy. The policy actions detailed in your amendment will help improve the efficiency and effectiveness of transportation plans, programs, and projects at all levels of government, and provide the American people—people of all ages—with better roads and safer communities.

Our country needs this kind of leadership and support. We are beset by a host of public health challenges such as obesity, physical inactivity, and motor vehicle-related injuries and fatalities. We know we need to be more active and the public health experts have identified walking and bicycling as two of the best opportunities available to improve and maintain our health.

Sadly, the streets in many of our communities are not yet inviting places to take a walk or ride a bike. However, we know how to make them better. Your proposed amendment will ensure that we do what needs to be done, for our health and for the health and well-being of our children and grandchildren.

Thank you.

Sincerely,

BILL WILKINSON,
AICP, Executive Director.

ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS,
Washington, DC, May 10, 2005.

Hon. TOM HARKIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HARKIN: On behalf of the Association of Metropolitan Planning Organizations, we write in support of your amendment to improve the safety of nonmotorized transportation, including bicycle and pedestrian safety. Metropolitan Planning Organizations (MPOs) are charged with planning for the nation's transportation needs and they work to protect and improve regions throughout the United States. MPOs

provide a locational nexus for representatives from various modes of transportation to come together in support of a more complete regional transportation system. We believe that your amendment will further the goal of ''Complete Streets'' and will provide much needed safety improvements for bicyclists and pedestrians, while alleviating congestion on our nation's roads.

We are pleased to see that this amendment targets MPOs in urban areas with populations greater than 200,000. While we recognize the importance of this amendment, we believe that requiring all MPOs to designate a bicycle/pedestrian coordinator would place an undue burden on our smallest members. Those MPOs that represent populations of greater than 200,000 are capable of these additional requirements, assuming that the PL increase to 1.5% that is currently in the Senate bill is realized. We are concerned, however, that if these requirements are imposed without a corresponding funding increase, we may not be able to meet these added expectations. The 2000 census designated 46 new MPOs but no additional funding was provided for these MPOs. As a result, over 350 MPOs are now sharing a pot of money that was established for approximately 300 MPOs.

We believe that ''Complete Streets'' is an important goal of a regional transportation system. We are pleased to see that you are offering this amendment as part of the transportation reauthorization bill. Please feel free to contact Debbie Singer at 202–296–7051 or dsinger@ampo.org if you have any further questions.

Sincerely,

MAYOR RAE RUPP SRCH,
AMPO President.

LEAGUE OF AMERICAN BICYCLISTS,
Washington, DC, May 11, 2005.

Hon. TOM HARKIN,
U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN: On behalf of the 300,000 affiliated members of the League of American Bicyclists and the nation's 57 million adult bicyclists, I am writing to support the inclusion of the ''Complete Streets Amendment'' as part of SAFETEA.

In ISTEA and TEA–21, Congress established the principle that new road projects and reconstructions should provide safe accommodation of bicycling and walking. While some states are beginning to make progress in this area, federal guidance on this issue has been overlooked by many state and local transportation agencies.

The Complete Streets Amendment seeks to address this issue by simply directing all states to adopt a ''Complete Streets Policy'' to ensure that states build streets and highways that adequately accommodate all transportation users—including bicyclists, pedestrians, and people with disabilities. In addition, the amendment encourages local action on bike/ped safety, sets goals for nonmotorized transportation, and focuses research on nonmotorized travel safety.

These are all important issues to the bicycling community and beyond. Other important issues that we are pleased that the bill managers have already recognized include:

Strengthening our core programs (Enhancements, Recreational Trails, CMAQ, etc.);

Establishing a Fair Share for Safety Provision, which ties safety spending to fatality crash rates by transportation mode; and

Providing a National Safe Routes to Schools Program, which provides funding to improve infrastructure and education to make it safer for our nation's children to bike and walk to school.

We applaud you for your leadership on this issue. Likewise, we applaud the bill managers for their commitment to completing action on a reauthorization bill that includes good investments that will give all Americans safer places to bike and walk.

The adoption of the ''Complete Streets Amendment'' does not add to the cost of the overall bill and is, in fact, complementary to the bicycling provisions already included. As such, we support its inclusion in SAFETEA.

Sincerely,

MELÉ WILLIAMS,
Director of Government Relations.

NATURAL RESOURCES DEFENSE COUNCIL,
Washington, DC, May 9, 2005.

Hon. TOM HARKIN,
U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN, On behalf of NRDC and our 600,000 members, I am writing to express support for your Complete Streets Amendment. This set of commonsense policies would spur new construction and retrofitting of highways and roads that aren't currently accessible to bikers and pedestrians—i.e., ''completing the streets'' so that all users are welcome, not just drivers.

The amendment is particularly timely, as public health experts encourage Americans to walk and bike as a response to the obesity epidemic. Completing our streets can help to meet this goal. In fact, one study found that 43 percent of people with safe places to walk within 10 minutes of home met recommended activity levels, while just 27% of those without safe places to walk were active enough. And another recent study found that residents are 65% more likely to walk in a neighborhood with sidewalks.

Benefits include more than increased physical activity. Air quality in our urban areas is poor and linked to increases in asthma and other illnesses. Replacing car trips with biking or walking means less air pollution. And if each resident of an American community of 100,000 replaced just one car trip with one bike trip just once a month, it would cut carbon dioxide (CO_2) emissions by 3,764 tons per year in the community.

In short, I commend you for offering this amendment, which would provide Americans with more transportation choices, improve public health and reduce pollution.

Sincerely,

DERON LOVAAS,
Vehicles Campaign Director.

AMERICAN SOCIETY OF
LANDSCAPE ARCHITECTS,
Washington, DC, May 9, 2005.

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: On behalf of the American Society of Landscape Architects, I write to convey our strong support for your proposed ''Complete Streets'' amendment to the SAFTEA legislation in the 109th Congress. In order to provide for safer and more active communities, we must complete our streets and roadways by ensuring that they are designed and operated to enable access for all users, including pedestrians, bicyclists and transit riders of all ages and abilities. In the past, the concerns of nonmotorized transportation users have been bypassed all too often, and your amendment takes a critical, common sense step toward a more comprehensive, integrated and effective transportation system.

Because of our nation's inherent strengths, continued growth, and boundless potential, we sometimes overlook the obvious as we forge ahead. We have arrived at the point where we have to take measures to better accommodate life outside of our automobiles. This is not a simple task, but, with proper planning, the benefits of a visionary approach will far outpace our initial efforts. Your amendment provides an appropriate and timely framework for those efforts by encouraging planning, prioritizing and research by states and municipalities.

If the Complete Streets Amendment is passed by the Senate, protected in conference, and signed into law along with the rest of SAFTEA, we can forecast the results with a great degree of confidence. Complete Streets will lead to improved safety, and promote a more active American lifestyle, with more walking and bicycling for health. Complete Streets will also help ease the transportation woes with which so many of us are increasingly familiar. Roadways that provide varying travel choices will give people the option to avoid traffic jams, reducing congestion and increasing the overall capacity of our transportation network.

This amendment also has an important place in the transportation bill because Complete Streets make fiscal sense. Integrating sidewalks, bike lanes, transit amenities, and safe crossings into the initial design of a project spares the costly expenses of retrofits later on ''down the road.''

As practitioners of urban design and revitalization, site planning, land use policy and master planning, landscape architects are continually engaged with public officials, developers and homeowners to design the places in which we live, work, and seek recreational opportunities. The American Society of Landscape Architects heartily encourages creating and improving access to places for physical activity within our communities.

It is not asking too much to make Complete Streets a national transportation priority. The Congress has worked long and hard to craft an effective transportation package, and the Complete Streets Amendment will put the country on the same ''planning page,'' providing us with sound footing as we move towards a stronger, safer, and healthier future. It is our hope that the United States Senate will recognize and endorse the wisdom of the Harkin Complete Streets Amendment. We thank you for your exemplary leadership on this critical component to the overall health, wellbeing, and functionality of our communities.

Sincerely,

PATRICK A. MILLER,
President.

FACTSHEET—NATIONAL ASSOCIATION OF COUNTY AND CITY HEALTH OFFICIALS

UNDERSTANDING THE ISSUES

Land use, community design, and transportation planning have an impact on the health of communities in relation to diseases and injuries, as well as quality of life and well being. Environmental conditions such as air quality, ground and surface water contamination, and the re-use of brownfields (used lands where expansion or redevelopment is complicated by real or perceived environmental contamination) affect disadvantaged populations more severely, particularly given the current separation between land use planning and public health. Local public health agencies (LPHAs) can ensure that community health is emphasized throughout the planning process by becoming involved during the early stages of land use planning. In order to ensure a better quality of life and the sustainability of our communities, it is important for planners and public health officials to collaborate on healthy solutions to the environmental health problems that exist where we live, work, and play. Planning and design decisions have a tremendous impact on a wide range of public health issues, including:

AIR QUALITY

Asthma and other respiratory diseases are caused, in part, by poor air quality. Poor air

quality is tied to pollution emitted from automobiles and other motor vehicles. In the United States, automobiles account for over 49 percent of all nitrogen oxide (NO_x) emissions, which contribute to smog and lead to serious health matters. Between 1980 and 1994, asthma rates rose by 75 percent. People in sprawling communities drive three to four times more than those who live in efficient, well-planned areas, thus increasing vehicle emissions that contribute to poor air quality.

WATER QUALITY

The National Water Quality Inventory: 1996 Report to Congress identified runoff from development as one of the leading sources of water quality impairment, accounting for 46 percent of assessed estuary impairment. In the United States, wetlands are being destroyed at a rate of approximately 300,000 acres per year, much of it for new development. Wastewater also poses a serious threat to water quality. In Florida, it is estimated that onsite sewage treatment and disposal systems discharge 450 million gallons per day of partially treated, non-disinfected wastewater, which can lead to contamination of ground water supplies.

TRAFFIC SAFETY

According to the National Personal Transportation Survey, walking accounts for only five percent of trips taken and less than one percent of miles traveled, due in part to a lack of appropriate and safe options for pedestrians. Approximately 4,882 pedestrians were killed by vehicles and 78,000 injured in 2001. A Texas study found that for three out of five disabled and elderly people, there are no sidewalks between their homes and the closest bus stop. Over 55 percent of all pedestrian deaths occur in neighborhoods, which are often designed with a bias toward cars, with no sidewalks or otherwise inadequate pedestrian accommodations.

PHYSICAL ACTIVITY

Community design often presents barriers to physical activity, contributing to increased risk for obesity, heart disease, diabetes, and other chronic diseases. Barriers include, but are not limited to, the absence of sidewalks, heavy traffic, and high levels of crime. Today, nearly one in four Americans is obese, and at least 50 percent are overweight. As access to recreational infrastructure may be limited, people with disabilities often have less opportunity to engage in physical activity. People are more likely to be physically active if they can incorporate activity into their daily routine. A 1996 report from the U.S. Surgeon General determined that each year, as many as 200,000 deaths are attributable to a sedentary lifestyle.

MENTAL HEALTH

According to the Human Environment-Research Lab, studies have shown that exposure to greenspace helps to foster an increased sense of community, and also lessens the effects of chronic mental fatigue, which reduces violence and aggressive behavior. A Cornell University study found that children whose families relocated to areas with more greenspace experienced an increase in cognitive functioning. Lack of accessibility, such as absence of ramps and narrow doorways, can contribute to an increase in isolation for the elderly and people with disabilities. Increased commuting time has been linked with physical and stress-related health problems. It is estimated that for each additional 10 minutes of driving time, there is a 10 percent decline in civic involvement.

HAZARDOUS MATERIALS

Hazardous materials are transported, stored, manufactured, or disposed of in many communities. Often, zoning and environmental regulations do not provide for the separation of incompatible land uses, like placing housing near areas zoned for use or storage of hazardous materials. In addition, hazardous waste sites continue to be a significant concern. The Environmental Protection Agency determined that one in every four children in the United States lives within one mile of a National Priorities List hazardous waste site. The United Nations Environment Programme links exposure to heavy metals with certain cancers, kidney damage, and developmental retardation.

SOCIAL JUSTICE

Evidence demonstrates that environmental hazards, air pollution, heat-related morbidity and mortality, traffic fatalities, and substandard housing disproportionately affect low-income and minority populations. Environmental Protection Agency data shows that Hispanics are more likely than Whites to live in air pollution non-attainment areas. Asthma mortality is approximately three times higher among Blacks than it is among Whites. As neighborhoods undergo gentrification, people of a lower socioeconomic status are pushed to the fringes, limiting their access to social services. A lack of public transportation options often exacerbates the problem and leaves minority populations disproportionately affected by less access to quality housing, healthy air, good quality water, and adequate transportation.

ROLE OF LPHAS

Because most land use planning occurs at the local level, it is essential that LPHAs become more integrated in the planning process in order to address and prevent unfavoravble outcomes for public health. LPHAs must assume a diverse and proactive approach in order to be successful in this role, including:

Forging partnerships between LPHAs and local planning and transportation officials in order to bring health to the planning table.

Using data to arm and inform stakeholders and decision makers, substituting national data if local data is unavailable.

Expanding the role of LPHAs in commenting on development plans.

Electing health officials to planning boards and other community positions.

Attending planning meetings regularly.

Serving as information conduits, keeping abreast of current processes and policies, and disseminating information to community members.

Adopting local resolutions on health and land use/transportation planning.

NACCHO'S ROLE

NACCHO's goal is to integrate public health practice more effectively into the land use planning process by enhancing the capacity of LPHAs to be involved in land use decision making. Through the development of tools and resources, NACCHO strives to promote the involvement of LPHAs with elected officials, planners, and community representatives in regard to health issues and land use planning. Focus groups conducted by NACCHO during the past year explored strategies for integrating public health and land use planning. To learn more, visit *www.naccho.org/project84.cfm*, or call (202) 783–5550 and ask to speak with a member of NACCHO's environmental health staff.

Mr. HARKIN. This amendment will improve our transportation system. It will improve pedestrian and bicycle safety.

And it will be good for the health and wellness of the American people. I urge my colleagues to join me in a strong, bipartisan vote in favor of this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, as noted by the Senator from Iowa, this bill incorporates more for bicycles and pedestrians than most highway users can support. We have been very generous. The activities are eligible under the core programs for the National Highway System, STP, CMAQ, highway bridge funding. They are eligible under scenic byways, Federal lands, rails and trails.

Do not get me wrong. I like bikes. I used to be a big bike rider. I am a big walker. But this is a highway bill. This is not a bill for bicycles and pedestrians. I would urge everyone to get exercise. The proposal we have before us would require my State department of transportation to plan for bicycles, completing Highway 63 from Macon to the Iowa line. Most of my good friends along there are not going to ride a bicycle from Macon to the Iowa line, to the wonderful farm fields in north Missouri or along the hilly mountain paths of Highway 60 in southern Missouri in the Ozark Mountains or Highway 13 or Highway 71.

We have plenty of programs. Bicycle transportation and pedestrian walkways are under here. It provides grants of $2 million. They want a bicycle clearinghouse like a Publishers Clearinghouse.

The proponent of this amendment says he needs it for the metropolitan planning organizations. Well, if my colleagues will look at section 134(a)(3) contents, the plans and programs for each metropolitan area shall provide for development and operation facilities, including pedestrian walkways and bicycle transportation. Metropolitan planning organizations already are mandated to do that.

Section 1823 has enhancement projects approved. They are eligible for facilities for pedestrians and bicycle activities, preservation for abandoned railway corridors. Similar to the administration's proposed SAFETEA, we elevated SAFETEA to a core program. This part, known as HSIP, there is a mandatory set-aside specifically for bicycle and pedestrian activities. We set it up as $717 million, and since the overall level of the bill has been raised by $8 billion, this level has gone up.

There is also the Safe Routes to School Program. If you want people to be safe going to school, the National Highway Traffic Safety Administration said 24 people die a year on average from school bus transportation, but it is far and away the safest way for children to go to and from school. That is by schoolbus.

A number of my colleagues have amendments regarding bicycle and pedestrian activities. It seems that they have some different priorities than the mayors and the community leaders and the State departments of transportation I see in my State. They want to make sure we have roads. If the department of transportation in Iowa and

Missouri want it, they can plan for it, as can the metropolitan planning organizations. I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The time of the Senator has expired. Under the previous order, the hour of 5:30 having arrived, the question is on agreeing to the Lautenberg amendment.

Mr. INHOFE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BOND. I ask unanimous consent to make a unanimous consent request on an amendment passed?

The PRESIDING OFFICER. The Senator is recognized.

Mr. BOND. I ask unanimous consent that the Talent amendment at the desk, which is identical to the amendment agreed to previously, be conformed to the pending amendment—the amendment which is identical to the amendment agreed to, be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. In my capacity as a Senator from Oklahoma, I reserve the right to object—I will object.

Objection is heard.

The question is on agreeing to the Lautenberg amendment. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Minnesota (Mr. COLEMAN), and the Senator from New Mexico (Mr. DOMENICI).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted ''nay.''

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON) is necessarily absent.

The result was announced—yeas 28, nays 69, as follows:

[Rollcall Vote No. 120 Leg.]

YEAS—28

Akaka	Durbin	Martinez
Biden	Feinstein	Mikulski
Boxer	Frist	Murray
Byrd	Harkin	Reid
Cantwell	Inouye	Rockefeller
Chafee	Kennedy	Sarbanes
Corzine	Landrieu	Warner
DeWine	Lautenberg	Wyden
Dodd	Levin	
Dole	Lieberman	

NAYS—69

Alexander	Collins	Isakson
Allard	Conrad	Jeffords
Allen	Cornyn	Johnson
Baucus	Craig	Kerry
Bayh	Crapo	Kohl
Bennett	DeMint	Kyl
Bingaman	Dorgan	Leahy
Bond	Ensign	Lincoln
Brownback	Enzi	Lott
Bunning	Feingold	Lugar
Burns	Graham	McCain
Burr	Grassley	McConnell
Carper	Gregg	Murkowski
Chambliss	Hagel	Nelson (FL)
Clinton	Hatch	Nelson (NE)
Coburn	Hutchison	Obama
Cochran	Inhofe	Pryor
Reed	Shelby	Sununu
Roberts	Smith	Talent
Salazar	Snowe	Thomas
Santorum	Specter	Thune
Schumer	Stabenow	Vitter
Sessions	Stevens	Voinovich

NOT VOTING—3

Coleman	Dayton	Domenici

The amendment (No. 625) was rejected.

AMENDMENT NO. 618, AS MODIFIED

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on the Harkin amendment.

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, this amendment is about doing what is logical regarding sidewalks and bike paths in the planning stages. You will hear there is money in this bill for sidewalks and bike trails. That is true. But more often than not, we are always doing things after the fact. We are redoing it.

All this amendment says is in the planning upfront, you plan for sidewalks where they are logical. You plan for bike paths where they are logical. You plan it in the beginning, not doing it later on. These are some of the organizations who support the amendment: the American Association of Retired People, the Association of Metropolitan Planning Organizations—they are the ones who have to do the planning; they are in favor of this amendment—American Bikes, Paralyzed Veterans of America—people with disabilities need more sidewalks—the American Heart Association, and the American Public Health Association.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I urge my colleagues to oppose this amendment. This provides tremendous resources for bicycles and pedestrians, more than $717 million in a mandatory set-aside for bike and pedestrian activities. Metropolitan planning organizations are already required under existing law to plan for bike and pedestrian facilities. What this amendment says is: If you are planning a highway from Leftover Shoes to Podunk Junction in the middle of a State with nobody around, you would have to plan for a bike path. We have a lot of roads through our Ozark hills and farmland where the danger is inadequate two-lane highways. People are not going to ride bicycles along those highways. They need the lanes to drive their cars. Putting an additional planning burden on agencies that don't want or need bike paths is another unwarranted mandate. I urge my colleagues to oppose the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 618, as modified.

Mr. HARKIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Minnesota (Mr. COLEMAN), and the Senator from New Mexico (Mr. DOMENICI).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON) is necessarily absent.

The result was announced—yeas 44, nays 53, as follows:

[Rollcall Vote No. 121 Leg.]

YEAS—44

Akaka	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Inouye	Pryor
Boxer	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Collins	Lautenberg	Schumer
Corzine	Leahy	Snowe
Dodd	Levin	Stabenow
Dorgan	Lieberman	Warner
Durbin	Lincoln	Wyden
Ensign	Mikulski	

NAYS—53

Alexander	DeMint	McCain
Allard	DeWine	McConnell
Allen	Dole	Murkowski
Baucus	Enzi	Nelson (NE)
Bennett	Frist	Roberts
Bond	Graham	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith
Burr	Hatch	Specter
Chafee	Hutchison	Stevens
Chambliss	Inhofe	Sununu
Coburn	Isakson	Talent
Cochran	Jeffords	Thomas
Conrad	Kyl	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	

NOT VOTING—3

Coleman	Dayton	Domenici

The amendment (No. 618), as modified, was rejected.

AMENDMENT NO. 610 TO AMENDMENT NO. 605

Mr. NELSON of Florida. Mr. President, on behalf of Senator FEINGOLD, I ask unanimous consent to call up his amendment 610 and ask that it be set aside after reporting by the clerk.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. NELSON], for Mr. FEINGOLD and Mr. LEAHY, proposes an amendment numbered 610.

The amendment is as follows:

(Purpose: To improve the accuracy and efficacy of identity authentication systems and ensure privacy and security)

In section 179(a) of title 23, United States Code (as added by section 7139(a)), insert ''previously verified as accurate'' after ''other information''.

In section 179(a) of title 23, United States Code (as added by section 7139(a)), strike ''with a system using scoring models and algorithms''.

In section 179(d)(1) of title 23, United States Code (as added by section 7139(a)), strike ''use multiple sources'' and insert ''ensure accurate sources''.

In section 179(d)(3) of title 23, United States Code (as added by section 7139(a)), strike ''and'' at the end.

In section 179(d) of title 23, United States Code (as added by section 7139(a)), strike paragraph (4) and insert the following:

''(4) incorporate a comprehensive program ensuring administrative, technical, and physical safeguards to protect the privacy and security of means of identification (as defined in section 1028(d) of title 18, United States Code), against unauthorized and fraudulent access or uses;

''(5) impose limitations to ensure that any information containing means of identification transferred or shared with third-party vendors for the purposes of the information-based identity authentication described in this section is only used by the third-party vendors for the specific purposes authorized under this section;

''(6) include procedures to ensure accuracy and enable applicants for commercial driver's licenses who are denied licenses as a result of the information-based identity authentication described in this section, to appeal the determination and correct information upon which the comparison described in subsection (a) is based;

''(7) ensure that the information-based identity authentication described in this section—

''(A) can accurately assess and authenticate identities; and

''(B) will not produce a large number of false positives or unjustified adverse consequences;

''(8) create penalties for knowing use of inaccurate information as a basis for comparison in authenticating identity; and

''(9) adopt policies and procedures establishing effective oversight of the information-based identity authentication systems of State departments of motor vehicles.''.

JUSTICE FOR TODD SMITH

Mr. NELSON of Florida. Mr. President, just today I initiated an effort to ask Peruvian President Alejandro Toledo to reopen an investigation into the brutal torture-murder of a young journalist from my state.

The 28-year-old reporter, Todd Smith, was found dead 15 years ago, his body discovered in Peru's violent coca-producing region. This son of a Florida appellate judge worked for The Tampa Tribune, and was investigating the drug traffic in the northern Peruvian jungle.

Officials in Peru were quick to say the murder was the work of the Shining Path—a Maoist insurgent group said to be involved in protecting cultivators of the coca plant. Specifically, Peru's Interior Ministry said Todd had been captured by Maoist rebels and possibly sold to drug traffickers for $30,000.

Four years later, a secret counterterrorism trial in Peru resulted in a Shining Path guerrilla being sentenced to 30 years in prison for taking part in the murder.

He was the only person ever tried for the crime—and even he reportedly has received an early release. Little else was known.

Now, however, the transcript of that secret 1993 trial has emerged, including an intelligence report that identifies a businessman who founded a Peru airline as one of the masterminds behind Todd's killing. The complete court file was obtained by a Lima-based institute for a free press and society.

According to one of several detailed intelligence reports in the trial transcript, the guerrillas who tortured and strangled Todd were working for Peru businessman Fernando Zevallos, and two others allegedly involved in the drug trade.

But Zevallos—labeled a Peruvian cocaine kingpin last year by the Bush administration—was never charged in the case. The New York Times quotes American and Peruvian authorities as saying he has evaded justice for so long by bribing court officials and killing witnesses.

It has been over 15 years since a son of Florida and a member of the fourth estate was tortured and strangled to death in the jungles of Peru—and clearly, justice has yet to be served.

In January, I went to Peru and there I established a working relationship with President Toledo and was joined by Ambassador Ferrero, Peru's ambassador to the United States

Today, through proper diplomatic channels, I made a formal request that President Toledo immediately reopen the investigation into Todd Smith's death; and, that his government cooperate fully with our State Department and FBI. And Ambassador Ferrero told me he ''would put all [his] effort into this.

I hope my Senate colleagues will join me in demanding that justice finally be served in this case.

Todd's parents, and his two sisters, deserve no less.

Mr. President, I am going to birddog this with everything I have to see that this case is brought to justice. I do believe the Peruvian government clearly has an interest, now that the secret court files have come to light, to get to the bottom of this. I earnestly hope we will get the cooperation of the Peruvian government in reopening the investigation. There is no excuse, when an American newspaper reporter is brutally tortured and murdered, that we should not have all the facts. If it leads, in fact, to this businessman, then so be it. We owe this especially to this family in Florida that for so long has not known any of the facts of this brutal killing of their son.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

AMENDMENT NO. 742 TO AMENDMENT NO. 605

Mr. INHOFE. Mr. President, I ask unanimous consent that the Talent amendment at the desk, which is identical to the amendment previously agreed to, be agreed to and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE], for Mr. TALENT, proposes an amendment numbered 742.

The amendment is as follows:

(Purpose: To require notice regarding the criteria for small business concerns to participate in Federally funded projects)

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

SEC. 18___. NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS.

The Secretary of Transportation shall notify each State or political subdivision of a State to which the Secretary of Transportation awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is funded, in whole or in part, by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 567g).

The PRESIDING OFFICER. Without objection, the request is agreed to.

The amendment (No. 742) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. INHOFE. Mr. President, I ask unanimous consent that we now go into a period of morning business, providing that each Senator can speak up to 10 minutes.

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

HONORING OUR ARMED FORCES

SERGEANT DAVID RICE

Mr. GRASSLEY. Mr. President, it saddens me to report today that another young Iowan has fallen courageously in service to his country as part of Operation Iraqi Freedom. Sergeant David Rice, a fire support specialist with the 1st Battalion, 5th Field Artillery Regiment, 1st Infantry Division, died on April 26 when his vehicle overturned near Muqdadiyah. He was 22 years old.

David grew up in Sioux City, IA, and attended East High School where he excelled in football, wrestling, and track and field. He joined the Army after graduating from East in 2001 and was on his second tour of duty in Iraq.

David Rice is remembered by friends and family as a hard-working, quiet leader. In memory of Sergeant Rice, I would like to recognize today all of our military men and women, like David, who have been the quiet, dedicated leaders who have helped see our country through this difficult time. My prayers go out to the family of Sergeant David Rice, his father David, his mother Laurinda, and his sister Stevie. They should know that his leadership and sacrifice have not gone unnoticed but have earned him the gratitude of a Nation.

SERGEANT ANGELO L. LOZADA, JR.

Mr. GREGG. Mr. President, I rise today to remember and honor Sergeant Angelo Lozada, Jr. of Nashua, NH for his service and supreme sacrifice for his country.

Angelo demonstrated a willingness and dedication to serve and defend his country by joining the United States Army. Just as many of America's heroes have taken up arms in the face of dire threats, Angelo dedicated himself to the defense of our ideals, values, freedoms, and way of life. His valor and service cost him his life, but his sacrifice will live on forever among the many dedicated heroes this Nation has sent abroad to defend freedom.

Angelo felt the call to serve our Nation early, and dutifully joined the Reserves after he graduated from high school. He served for 6 years in the New Hampshire Army National Guard's Bravo Battery, 1st Battalion, 172nd Field Artillery Regiment before signing up for active duty on July 26, 2000. He was deployed to Iraq in 2003, where he served in Alpha Battery, 2nd Battalion, 17th Field Artillery Regiment, 2nd Infantry Division, stationed out of Camp Hovey, Korea. Tragically, on April 16, 2005, Angelo made the ultimate sacrifice for this great Nation. He died of injuries sustained while conducting combat operations in Ar Ramadi, Iraq.

Throughout his career, Angelo earned a series of accolades which testify to the dedication and devotion he held for his fellow soldiers, the Army, and his country. Angelo's hard work and dedication contributed greatly to his unit's successes and placed him among many of the great heroes and citizens that have paid the ultimate price for their country. Angelo was recognized posthumously for his courageous actions in Iraq by receiving the Bronze Star, the Purple Heart, and an Army Commendation Medal. He had also been recognized throughout his distinguished career by receiving the Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Korean Defense Service Medal, Army Service Ribbon, and the Weapons Qualification Badge, M–16 Expert. He was also a graduate of the Primary Leadership Development Course and was recently promoted to Sergeant in May of 2004.

Angelo was truly an exceptional soldier with more than 10 years of service and a father of three who had decided to reenlist after his tour of duty in Iraq. He leaves behind a family with a proud tradition of military service, including three brothers who served in the Army.

My condolences and prayers go out to Angelo's family, and I offer them my deepest sympathies and most heartfelt thanks for the service, sacrifice, and example of their soldier, Sgt Angelo Lozada, Jr. He was respected and admired by all those around him, and continually performed above and beyond all expectations while in the United States Army. Because of his efforts, the liberty of this country is made more secure.

MORE OPPOSITION TO THE GUN INDUSTRY IMMUNITY BILL

Mr. LEVIN. Mr. President, since the reintroduction of the Protection of Lawful Commerce in Arms Act, many law enforcement and community groups around the country have publicly stated their opposition to the bill. In Michigan alone, the bill is opposed by organizations including the Michigan Association of Chiefs of Police, the League of Women Voters of Michigan, the Michigan Partnership to Prevent Gun Violence, and local chapters of the Million Mom March.

Law enforcement and community groups oppose the misnamed ''Protection of Lawful Commerce in Arms Act'' because it would significantly weaken the legal rights of gun violence victims. The bill would provide members of the gun industry with legal protections not enjoyed by other industries and deprive many gun violence victims with legitimate cases of their day in court.

Two former Directors of the Bureau of Alcohol, Tobacco, and Firearms have added their voices to the already considerable and growing opposition to this bill. In a letter to Congress, former ATF Directors Stephen Higgins and Rex Davis state that the gun industry immunity legislation would threaten the ATF's ability to effectively enforce our Nation's gun laws. Specifically, they cite provisions in the bill that would likely block the ATF from pursuing administrative proceedings ''to revoke a gun dealer's federal firearm license if the dealer supplies guns to criminals or other prohibited buyers'' and ''to prevent the importation of non-sporting firearms used frequently in crimes.'' Later in the letter, former Directors Higgins and Davis state:

> We know from experience how important it is that ATF be able to enforce our nation's gun laws to prevent firearms from being obtained by terrorists, other criminals, and the gun traffickers who supply them. To protect our citizens from the scourge of gun violence Congress should be strengthening our laws and increasing ATF's resources and ability to enforce those laws. To handcuff ATF, as this bill does, will only serve to shield corrupt gun sellers, and facilitate criminals and terrorists who seek to wreak havoc with deadly weapons. To take such anti-law enforcement actions in the post-9/11 age, when we know that suspected terrorists are obtaining firearms, and may well seek them from irresponsible gun dealers, is nothing short of madness.

Combined, former Directors Higgins and Davis have more than two decades of experience in leading the ATF. We should recognize their extensive knowledge of gun violence issues and follow their advice. Instead of providing a single industry with broad immunity, we should be protecting the legal rights of gun violence victims and enhancing the effectiveness of our law enforcement agencies.

I ask unanimous consent that a list of some of the law enforcement and community organizations opposing this legislation be printed in the RECORD.

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

MICHIGAN ORGANIZATIONS

Michigan Association of Chiefs of Police
League of Women Voters of Michigan
Michigan Partnership to Prevent Gun Violence
Detroit Million Mom March Chapter
East Metro Detroit Million Mom March Chapter
Mid-Michigan/Lansing Million Mom March Chapter
Novi Million Mom March Chapter
Southwest Michigan Million Mom March Chapter
Washtenaw County MMM Chapter
West Metro Detroit/Washtenaw County Million Mom March Chapter

NATIONAL LAW ENFORCEMENT ORGANIZATIONS

International Brotherhood of Police Officers
Major Cities Chiefs Association
National Black Police Association
Hispanic American Police Command Officers Association

OTHER NATIONAL ORGANIZATIONS

Alliance for Justice
American Association of School Psychologists
American Association of Suicidology
American Bar Association
Americans for Democratic Action
American Humanist Association
American Public Health Association
Brady Campaign To Prevent Gun Violence united with the Million Mom March
Child Welfare League of America
Children's Defense Fund
Church Women United
Coalition To Stop Gun Violence
Common Cause
Congregation of Sisters of St. Agnes Leadership Team
Consumer Federation of America
Consumers for Auto Reliability and Safety
Disciples Justice Action Network
Equal Partners in Faith
Evangelical Lutheran Church in America
Hadassah The Women's Zionist Organization Of America
HELP Network
League of Women Voters of the U.S.
Legal Community Against Violence
National Council of Jewish Women
National Council of Women's Organization
National Research Center for Women & Families
Physicians for Social Responsibility
Presbyterian Church (USA)
Public Citizen
Religious Action Center of Reform Judaism
States United to Prevent Gun Violence
The American Jewish Committee
The Ms. Foundation for Women
The Society of Public Health Education (SOPHE)
The United States Conference of Mayors
Unitarian Universalist Association of Congregations
Veteran Feminists of America
Women's Institute for Freedom of the Press

EMERGENCY SUPPLEMENTAL APPROPRIATIONS

Mr. McCAIN. Mr. President, when the Senate debated this bill a few weeks

ago, I asked my colleagues a simple question. What is the purpose of an emergency appropriations bill? The purpose, it seems to me, is to fund unexpected priorities—emergencies that simply cannot wait for the normal budget process. The conference report largely fulfills that purpose. It covers unexpected costs associated with the war on terror, tsunami relief, and national security priorities, including funding for our troops serving in Iraq and Afghanistan. I strongly support funding in these areas.

But that is not all it does, Mr. President. This conference report has also served as a magnet for non-emergency spending and includes a host of earmarks. Let me be clear: I support this conference report because of the critical resources it provides for our troops and for our other emergency priorities, including tsunami relief. But at the same time I am deeply disturbed that the Congress isn't exhibiting restraint. Knowing that this conference report was a ''must pass'' piece of legislation, we have once again loaded it with unrelated provisions. Let me remind my colleagues that we are experiencing enormous budget deficits. At some point, we will have to embrace some degree of fiscal responsibility.

We should start with this emergency supplemental. The scope of emergency appropriations has traditionally been limited, and for good reason. We already have a proper budget and appropriations process. We don't need another. The proper process is supposed to allow Congress to meet Federal responsibilities while closely monitoring the effect our spending has on the budget deficit and the national debt. But appropriations that are designated as ''emergency'' do not count against the discretionary budget ceilings that we ourselves set. They add to costs incurred by the government and cause the current budget deficit to grow. With enactment of this measure, supplemental military spending alone since September 11, 2001, will top $200 billion. I am not questioning funding the war on terror; but I am questioning the unnecessary add-ons.

With respect to the substance of this conference report, I am pleased that it will provide the necessary resources to our troops as well as additional funds for our homeland security needs. It increases veterans benefit levels and expands eligibility, and provides higher benefits to family members of those killed in military service. This foreign affairs provisions of the conference report are remarkably, and commendably, free of pork. As one who supports ensuring that every taxpayer dollar counts, I commend my colleagues for their restraint in this area while meeting the President's request for funding for the victims of the South East Asian tsunami.

Unfortunately, this conference report also includes some unnecessary provisions, examples of which I will give in just a moment. I fully recognize that it isn't only the fault of the appropriators that the Congress has been forced into this new pattern of adopting emergency appropriations measures. Overly partisan politics has largely prevented us from following the regular legislative order, and that fact must change.

I would ask my colleagues whether they believe the following examples—just a select few from this conference report—constitute ''emergency spending'': $2,000,000 to upgrade the chemistry laboratories at Drew University in New Jersey. According to its website, Drew University has a total enrollment of 2,600 students, operates with a $200,000,000 endowment, and draws more National Merit Scholars than many other top liberal arts colleges in the nation. A prestigious institution indeed, but I see no way in which funding for its chemistry labs is a critical national spending emergency; $500,000 for the Oral History of the Negotiated Settlement project at the University of Nevada-Reno; $2,000,000 to continue funding for the Southeast Regional Cooling, Heating and Power and Biofuel Application Center in Mississippi; $4,000,000 to payoff debt at the Fire Sciences Academy in Elko, Nevada; and $2,000,000 for the National Center for Manufacturing Sciences in Michigan.

Additionally, notwithstanding Senate rules against legislating on an appropriations bill, the legislation before us today contains plenty of policy-related, non-appropriations language. For example: The conference report directs the Secretary of the Interior to allow oil and gas exploration underneath the Gulf Island National Seashore, a protected National Park in Mississippi. This changes current Federal policy disallowing such exploration; a line-item in the conference resolution blocks the EPA from revising how it collects fees for the registration of pesticides. For several years, similar language has been routinely added to VA–HUD/EPA appropriations legislation. Now this provision has found a new home in the emergency spending bill; it authorizes the Bureau or Reclamation to study the viability of establishing a sanctuary for the Rio Grande Silvery Minnow in the Rio Grande River; it directs the Army Corps of Engineers to complete the Indiana Harbor and Canal disposal project; and California lawmakers have seen to it that this bill provides funds for San Gabriel Basin restoration.

Mr. President, we simply must start making some very tough decisions around here if we are serious about improving our fiscal future. Let's be clear about what we are doing. The Government is running a deficit because it is spending more than it takes in. So each one of the earmarks in this bill, we are borrowing money—and saddling future generations of Americans with unnecessary debt. If we had no choice but to act in this way, this might be, a understandable, temporary method of budgeting. But the fact is that we do have a choice.

At a conference in February, 2005, David Walker, the Comptroller General of the United States, said this:

> If we continue on our present path, we'll see pressure for deep spending cuts or dramatic tax increases. GAO's long-term budget simulations paint a chilling picture. If we do nothing, by 2040 we may have to cut federal spending by more than half or raise federal taxes by more than two and a half times to balance the budget. Clearly, the status quo is both unsustainable and difficult choices are unavoidable. And the longer we wait, the more onerous our options will become and the less transition time we will have.

Is that really the kind of legacy we should leave to future generations of Americans?

Referring to our economic outlook, Federal Reserve Chairman Alan Greenspan testified before Congress that:

> (T)he dimension of the challenge is enormous. The one certainty is that (the resolution of this situation will require difficult choices and that the future performance of the economy will depend on those choices. No changes will be easy, as they all will involve lowering claims on resources or raising financial obligations. It falls on the Congress to determine how best to address the competing claims.

It falls on the Congress, my friends. The head of the U.S. Government's chief watch-dog agency and the Nation's chief economist agree—we are in real trouble.

Dire predictions, and what are we doing about it? Are we restraining our spending? No, of course not. We are at it again, finding new and ever more creative ways to funnel money to the special interests. We have to face the facts. Congress cannot continue to spend taxpayer dollars on wasteful, unnecessary pork barrel projects or cater to wealthy corporate special interests any longer. The American people deserve better.

OLDER AMERICANS MONTH

Mr. SARBANES. Mr. President, when President Kennedy established Older Americans Month in 1963, he began an important tradition of designating a time for our country to honor older citizens for their many accomplishments and contributions to our Nation. Now, as we recognize May as ''Older Americans Month,'' I welcome the opportunity to reflect on the contributions senior citizens have made in shaping our Nation and to reassert our commitment to enhancing the living standard of our senior community.

This year's theme is ''Celebrate Long Term Living.'' Many seniors in Maryland exemplify that idea, continuing to lead vital, active lives throughout their ''golden years.'' Bob Ray Perry Hall, from Hamilton, MD, who ran every day from April 4, 1967 until his 68th birthday on April 7, 2005, is one such example. Mr. Hall holds the longest consecutive running streak in the United States and the second longest record in the entire world, a remarkable accomplishment at any age. Ms. Evelyn Wright of Annapolis is another

senior to celebrate. In 2003, Ms. Wright was named National Master Field Athlete of the Year for 2003 and since the age of 55, she has amassed hundreds of medals and trophies as a competitor in Senior Olympic events. She started her track and field career with the softball throw, but now competes in a multitude of events including pole vault, high jump, long jump, and hammer throw. She continues to travel around the country competing and setting track and field records for her age group. Many seniors in Maryland are enjoying old age by starting new ventures. At age 68 and 66 respectively, Emily Levitas and Linda Segal decided to join forces and become co-owners of ''Gotta Have Bags,'' a successful handbag store located in Hampden.

The list of enterprising, energetic, and active Maryland seniors and others throughout the Nation goes on and on and extends to all facets of life. We are very grateful for the enormous contributions they make day in and day out. But as a Nation, we do not always live up to our end of the bargain. There is much to be done to help seniors sustain quality long-term living. I have worked diligently in the Senate to ensure that older Americans are able to live with dignity and independence during their later years, and we will continue to fight the recent slew of misguided attacks on Social Security, Medicare, and other programs so crucial to senior citizens.

I have significant concerns about the impact of Medicaid cuts on seniors. People often forget that Medicaid is the largest funding source for long-term care services, institutional and home-based, for the elderly. Without such aid, many older Americans could not manage to pay for adequate care. Yet the Administration proposes to slash this program while extending tax cuts for the wealthiest among us. It is difficult to ''celebrate long-term living'' if you cannot afford to secure reasonable quality healthcare and long-term living facilities.

Another critical need that must be addressed is affordable prescription drugs. I voted against the Medicare Prescription Drug and Modernization Act of 2003 because I believed it would jeopardize promises that we as a Nation have made to seniors. I was principally concerned that the new law would fail to provide a comprehensive, consistent, and affordable prescription drug benefit to Medicare beneficiaries. Many of the concerns that I had during consideration of that measure are now coming to fruition. Indeed, as we prepare for the implementation of the drug benefit in 2006, we are just now learning that seniors will encounter the uncertainty of incomplete coverage for drug costs, along with rapidly rising pharmaceutical costs. To address these concerns, I favor proposals that provide Medicare beneficiaries with full prescription drug coverage. In addition, a number of my colleagues and I supported legislation during the Senate's consideration of the Medicare overhaul that would have controlled drug prices by allowing our Government to negotiate directly with drug companies. Unfortunately, these proposals were defeated when they came to the Senate for a full vote, but I continue to work with my colleagues on these and other proposals to bring drug prices under control.

On top of all of this, the Medicare trustees have predicted exhaustion of the Medicare Hospital Inpatient Trust Fund in 2020. With the rising costs of drugs and health care in general, and the implicit lack of means to reduce drug costs in the new law, we will be faced with hard decisions sooner than originally anticipated. The answer to the funding gap must not be to decrease benefits. A comprehensive Medicare plan and affordable pharmaceuticals are two important pieces that could help seniors live with dignity and independently, but these crucial needs remain very much in jeopardy.

Finally, our seniors deserve the guarantees promised to them after years of contributing to the Social Security program. In 1935, President Roosevelt sought to create a program that would ''give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.'' There are those who suggest that the only way Social Security can meet the expanding demand of future retirees is by creating private accounts and simultaneously decreasing benefits. We must work to preserve, not diminish, Roosevelt's legacy. Thus far, Social Security has been effective in improving the standard of living and reducing poverty among the elderly and disabled by providing an inflation-indexed, defined benefit, no matter how long an individual lives and regardless of the vagaries of the stock market. Throughout their lives, seniors have paid into a system with the understanding that their benefits will be there for them when they retire. We must uphold our end of the bargain and ensure that these benefits are available. The words of President Roosevelt should continue to guide our conscience.

This Older Americans Month I ask my colleagues to respect and renew our commitment to our seniors and all of our citizens. As seniors face old age, they should not face uncertainty about their living situations, about their access to health care, and about their financial circumstances. Our older Americans add great value to our Nation. We must take this month as an opportunity to redouble our efforts on behalf of this and future generations so that our older Americans can continue to ''Celebrate Long-Term Living'' now and well into the future.

TAKE OUR DAUGHTERS AND SONS TO WORK DAY

Ms. LANDRIEU. Mr. President, today I have 18 young men and women from Louisiana and the Washington area taking part in Take Our Daughters and Sons to Work Day. I am going to submit all of their names for the RECORD to show that they spent a day working in the Senate with me and with some of the other Senators and have seen firsthand the work that goes on.

I want to acknowledge the MS Magazine Foundation that started Take Our Daughters and Sons to Work Day to thank them for organizing this effort where there are thousands, maybe perhaps millions, of young people who have taken a day out of their school work to go to the various places where Americans are working to contribute to making this country of ours a better country and this world a better place.

I thank these young men and women for being a part of this special day and taking their time to come and learn about the workings of the Senate:

From St. Catherine of Siena School: Gabrielle Bordlee, Metairie, LA;

From Schriever Elementary School: Cameron Dark, Houma, LA;

From Georgetown Day School: Alexa Dettlebach, Chevy Chase, MD;

From St. Francis Xavier School: Brennan Duhe, Baton Rouge, LA;

From Washington International School: Maggie Johnson, Washington, DC;

From Holy Name of Jesus School: Ben Landrieu, New Orleans, LA;

From Xavier University Preparatory School: Jasmine Love, New Orleans, LA;

From Cathedral-Carmel School: Andrew Mahtook, Lafayette, LA;

From Cathedral-Carmel School: Robbie Mahtook, Lafayette, LA;

From Tchefuncte Middle School: William Mitchell, Mandeville, LA;

From St. James Episcopal Day School: Dexter Righteous, Baker, LA;

From Georgetown Day School: Molly Roberts, Washington, DC;

From Georgetown Day School: Connor Snellings, Washington, DC;

From Georgetown Day School: Mary Shannon Snellings, Washington, DC;

From St. George's Episcopal School: Leah Thomas, New Orleans, LA;

From St. Clement of Rome School: Mary Catherine Toso, Metairie, LA;

From St. Elizabeth School: Charlie Triche, Napoleonville, LA;

From St. Joseph Elementary: Sam Triche, Napoleonville, LA.

CONTRIBUTIONS OF MISS ELIZABETH BRYDEN TO THE SENATE REPUBLICAN CONFERENCE

Mr. SANTORUM. Mr. President, in 1939, before many Members of this body had been born, Miss Elizabeth Bryden of Waltham, MA, came to Washington, D.C. to work for Congressman Robert Luce. She continued to work on the Hill, with little interruption, until the start of the 96th Congress in 1979. Today, when most Hill staffers remain here for only a few years, Betty Bryden, as she was always known, remains an example of rare dedication and extraordinary public service.

Her early employers are now mostly names for the history books. For example, Senator Leverett Saltonstall of Massachusetts and Bourke Hickenlooper of Iowa, not to mention

Gordon Allot of Colorado and Congressman McIntyre of Maine. Several of those gentlemen chaired the Senate Republican Conference, a position I now hold.

As the research librarian for the Republican Conference, in the days before computers, Betty would come into the Russell Senate Office Building hours before most staffers would arrive. By the time the Senate began business for the day, she would have copied, filed, and cross-filed, in what must have been one of the world's most elaborate reference systems, scores of that day's news items from a wide variety of sources. The cumulative result was a towering warren of filing cabinets, jammed with thousands of sheets of paper, the location of each of which she somehow remembered. It was not unusual for Senators to request urgent information from both the Congressional Research Service and Betty, knowing there was a good chance she would have it on their desks long before the official system could respond.

With today's internet, of course, it is not necessary for our staff to literally walk across town through a winter blizzard in order to provide the day's news clips, but that is what Betty was known to do on occasion. Little wonder, then, that she had a special place in the hearts of many Senators. Another remarkable Republican woman, Senator Margaret Chase Smith, was especially close to Betty and requested that she join the board of the Smith Library in Maine, on which Betty still serves.

It must be admitted that, during most of the period when Betty worked on the Hill, opportunities for advancement for women were limited. It's hard to imagine how they ran this place without the full participation of women; we could not manage to do that today. And yet Betty always found ways to make a difference. At the request of Senator Saltonstall, for example, she took under her wing a young man who needed to be trained as a legislative assistant. Even though, as a woman, she was not eligible for the job, she produced a first-rate legislative aide. The young man was named Eliott Richardson, and throughout his later career he never forgot his teacher and always made a point of paying his respects to her personally when his official duties brought him to the Senate.

On behalf of the Senate Republican Conference and its leadership past and present, I salute Betty for her lifetime of labor in our behalf and, indeed, for the entire Senate. Betty's contributions to this institution are still appreciated, and she remains an inspiration to us all.

ADDITIONAL STATEMENTS

A TRIBUTE TO LEONARD WING, JR.

• Mr. JEFFORDS. Mr. President, I rise today to pay tribute to a good friend, Leonard Wing, Jr., who passed away Saturday, April 30, 2005. Leonard was a decorated war hero, a civic leader, a devoted family man, and a great Vermonter.

I knew Leonard almost my entire life. We grew up across the street from each other on Kingsley Avenue in Rutland, VT. When I was a young boy, Leonard left Vermont to fight in World War II. Leonard was wounded and taken prisoner in Europe before escaping and fleeing to northern Africa with help from the Polish underground. For his efforts in the European Theatre, Leonard was awarded the Silver Star and the Purple Heart, in addition to other commendations. I still remember listening in awe as my neighbors in Rutland recounted the heroics of Leonard and his father, MG Leonard Wing, Sr., who was a Vermont legend for his military leadership in the South Pacific. Leonard Wing, Jr. went on to serve for over 30 years in the Army and Army National Guard before retiring as a brigadier general in 1973.

After World War II, Leonard returned to the United States and continued his studies, graduating from the Boston University School of Law in 1950. After law school, Leonard returned to Vermont and became one of the State's finest attorneys, practicing law in Rutland for 46 years. During his legal career, Leonard served as both the president of the Vermont Bar Association and the State director of the American College of Trial Lawyers.

To residents of Rutland, Leonard is probably best known, however, for his local leadership and civic involvement. Leonard sat for 6 years on the Rutland City Board of School Commissioners, part of that time serving as the board's president. Most significantly, Leonard helped found the Havenwood School in Rutland. He also served as president of that school in addition to holding the same post at the Rutland Association for Retarded Citizens and the Vermont Association of the Retarded. These are just a few notable examples of the many charitable and civic activities to which Leonard lent his time.

Leonard's life was marked by his extraordinary service to his local community, his State, and his country. The city of Rutland, and the State of Vermont, will not be the same without Leonard's leadership. He will be most missed, however, by those he loved most dearly: his family. I offer my condolences to his wife Mary and their nine children. I hope they take comfort in knowing that Leonard's accomplishments and service will not soon be forgotten by the scores of Vermonters whose lives he touched.•

HONORING T. LAMAR SLEIGHT

• Mr. CRAPO. Mr. President, I rise today to honor a native Idahoan who has distinguished himself in the military, public service, and as a religious contributor. T. LaMar Sleight retired recently from his position as the Director of International and Government Affairs for The Church of Jesus Christ of Latter-Day Saints. LaMar is a native of Idaho, born in Montpelier and educated in Preston. In his years of public service, he has set a fine example of leadership and dedication.

LaMar served more than 34 years in the military, retiring in 1993 as a Colonel in the United States Army. He joined the National Guard at age 18. Eventually the Guard sent him to OCS and he joined the Army. He was awarded three awards of the Legion of Merit and the Bronze Star medal. His overseas assignments took him to Korea, Vietnam and Germany. Assignments closer to home include Oklahoma, Georgia, Nebraska, and Washington, DC. His military career clearly influenced his organized and structured leadership style.

Upon retiring from the military, LaMar took up the challenging position as the Director of International and Government Affairs for The Church of Jesus Christ of Latter-Day Saints. He has been an outstanding liaison for the LDS Church and the international community. I have enjoyed my interaction with him during my tenure in Congress, which extends back more than 12 years. He has a calming, measured demeanor and could always be counted on to provide a full view of any issue that was being discussed.

No doubt LaMar is balancing his ongoing volunteer service to his church with lots and lots of golf. With 6 children and 11 grandchildren, there is also a lot of family time and experiences ahead. I wish him the best as he undertakes this change in his life.•

WE THE PEOPLE

• Mr. OBAMA. Mr. President, recently, more 1,200 students from across the United States visited Washington, DC to take part in the national finals of We the People: The Citizen and the Constitution, the most extensive educational program in the country developed specifically to educate young people about the U.S. Constitution and Bill of Rights.

I applaud the class from Maine Township High School in Park Ridge that skillfully represented the great State of Illinois in this prestigious national event. Through their knowledge of the U.S. Constitution, these outstanding students won the statewide competition and made Illinois proud in the national competition here in our Nation's capitol.

Congratulations to Nicole Calabrese, Carly Calkins, Emily Cottrell, Keith Dent, Katie Eichstaedt, Alyssa Engle,

Katie Funkhouser, Kathryn Futris, Jacqueline Heffernan, Kevin Kane, Erin Keating, Maddie Kiem, Dan Leung, Mike Mangialardi, Kelly McKenna, Ryan Morrisroe, Allison Mueller, Jessica Newton, James Pikul, Elizabeth Poli, Ashley Rezaeizadeh, Alex Schallmo, Jimmy Skuros, Ryan Stegink, Dan Widing, Meredith Wisniewski, and their teacher Dan States. I commend each and everyone of you for your hard work.

While in Washington, these students participated in a 3-day academic competition that simulated a congressional hearing in which they ''testified'' before a panel of judges. Students demonstrated their knowledge and understanding of constitutional principles and had opportunities to evaluate, take, and defend positions on relevant historical and contemporary issues.

I wish these students the best of luck in their future endeavors and applaud their outstanding achievement.●

COMMENORATING THE 40TH ANNIVERSARY OF MOORE'S LAW

● Mr. BINGAMAN. Mr. President, 40 years ago in the April 1965 issue of Electronics magazine, Gordon Moore, a young engineer, accurately forecast years of exponential improvements in computer chip performance. His abstract observations led to the most concrete results.

In his article entitled, ''Cramming More Components onto Integrated Circuits,'' Moore first articulated his thinking on the future of the integrated circuit. Later, he theorized that the number of transistors on a computer chip would continue to double in power for the same price every 18 months. This postulation became popularly known as Moore's Law, and it was a stunning challenge for scientists and engineers to discover new phenomena and ideas to maintain America's technological momentum.

Shortly thereafter, Gordon Moore helped found the Intel Corporation, which started as a pioneer in cutting-edge semiconductor technology and today remains at the frontier of innovation in integrated circuits. Since that time, all in accordance with Moore's Law, there have been more than three dozen such doublings in computer chip performance.

No wonder that we marvel how our world has changed more in the past century than in the previous hundred centuries. It took 10,000 years to get from the dawn of civilization to the airplane, but just 66 years to get from powered flight to the moon landing. In 1971, Intel could fit 2300 transistors on a silicon chip; later this year, Intel is expected to unveil a chip with nearly 2 billion transistors.

''It's kind of a Biblical thing,'' Leon Lederman, the Nobel laureate, once noted, ''Science begets technology. Once we have transistors, we can make computers. When we have computers, we can make much better transistors . . . which can make better computers.''

In the years ahead, networked supercomputers operating at speeds of over one thousand trillion operations per second will have implications as profound as the Industrial Revolution's spread of technology.

Such technological innovation, predicted by Moore's Law, has led to advances in virtually every industry and has fundamentally impacted the way we live, work, and play. Information technology has become commonplace in our schools, libraries, homes, offices, and businesses—and new information technology applications are still developing rapidly.

Information technology has had a mutually reinforcing relationship with our ''golden age'' of science and engineering. Advances in supercomputers, simulations, and networks are creating a new window into the natural world—making computing as valuable for theory and experimentation as a tool for scientific discovery.

It has accelerated the pace of scientific discovery across the board in all scientific disciplines. Information visualization and simulation technologies make it possible to learn, explore, and communicate more complex concepts. Supercomputer technology, for example, allows researchers to develop life-saving drugs more rapidly, better understand the functions of our genes once they have been sequenced, or more accurately predict tornadoes. Advanced information technology tools have emerged to support ''collaboratories''—geographically separate research units on different sides of the world functioning as a single laboratory.

Perhaps the most important area where information technology's impact has been greatest is in our economic sector. It is commonly credited as being a key factor in our economy's structural shift from manufacturing to services, altering the nature of our work and the needs of our workforce.

The widespread diffusion of information technology throughout the economy, and its integration into new business models producing more efficient production methods added a full percentage point to the Nation's productivity after 1995. Economists note that productivity is the most important driver of long-term economic growth, and information technology increases economic output more than any other type of capital investment.

Beginning in 1995, U.S. productivity—spurred by information technology applications—accelerated to rates of growth not seen in two decades. The difference between 1.5 percent and 2.5 percent productivity growth is the difference between the standard of living doubling in one generation or in two generations. It has enormous implications.

The impact of Moore's Law and the resulting U.S. technology industry has also had enormous implications for my home State of New Mexico.

We are proud to be part of the drive within the technology industry to keep pace with Moore's Law. Small and large businesses alike which are part of our local technology industry have led to steadily increasing economic growth and development. Intel Corporation, with Gordon Moore at its helm, has become a major contributor to our State's economy and is an example of the impact that U.S. technological leadership has at a local level.

Overall, Intel has a significant economic and fiscal impact on our State and region. Intel came to Rio Rancho, just outside of Albuquerque, in 1980 and has grown to become our State's largest private manufacturer. Intel New Mexico employs more than 5,000 people and pays some of the highest wages. In 2001–2002, Intel spent $2 billion on new facilities and upgrades to other facilities.

Moreover, Intel's continued growth has brought other benefits to our communities as well, particularly in the area of education. Intel made a $2 million donation to the National Hispanic Cultural Center to integrate the latest technology tools in support of the Intel Center for Technology and the Visual Arts. Intel's ''Teach to the Future'' has provided technology training for more than 6,000 New Mexico teachers to help them incorporate technology into their curricula and help prepare our children for the jobs of the 21st century. Intel has also launched two Computer Clubhouses, technology and mentoring programs for youth in Albuquerque and Santa Fe.

While Moore's Law has meant so much to my State and our Nation, we need to acknowledge that engineering, computer chips, and information technology are about more than our material wealth or our simple acquisition of knowledge. Basically, they are about our dreams.

We have always been a Nation that is defined by the great goals we set, the great dreams we dream. We have always been a restless, questing people—and with willpower, resources, and great national effort, we have always reached our horizons and then set out for new ones.

So on this 40th anniversary of Moore's Law, I want to salute the extraordinarily important contributions of Gordon Moore, the Intel Corporation, and the many other scientists and engineers who have helped us imagine and invent the future.

In large measure, their contributions have made this new century before us so full of promise—molded by science, shaped by technology, and powered by knowledge. These potent transforming forces can give us lives richer and fuller than we have ever known before.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:15 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1023. An act to authorize the Administrator of the National Aeronautics and Space Administration to establish an awards program in honor of Charles ''Pete'' Conrad, astronaut and space scientist, for recognizing the discoveries made by amateur astronomers of asteroids with near-Earth orbit trajectories.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 86. Concurrent resolution authorizing the use of the Capitol Grounds for the Greater Washington Soap Box Derby.

H. Con. Res. 135. Concurrent resolution authorizing the use of the Capitol Grounds for the District of Columbia Special Olympics Law Enforcement Torch Run.

H. Con. Res. 136. Concurrent resolution authorizing the use of the Capitol Grounds for the National Peace Officers' Memorial Service.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 31. Concurrent resolution to correct the enrollment of H.R. 1268.

ENROLLED BILL SIGNED

At 11:26 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 1268. An act making Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief, for the fiscal year ending September 30, 2005, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. STEVENS).

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1023. An act to authorize the Administrator of the National Aeronautics and Space Administration to establish an awards program in honor of Charles ''Pete'' Conrad, astronaut and space scientist, for recognizing the discoveries made by amateur astronomers of asteroids with near-Earth orbit trajectories; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 989. A bill to ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–2074. A communication from the Principal Deputy Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Hamilton Wetland Restoration Project; to the Committee on Environment and Public Works.

EC–2075. A communication from the Principal Deputy Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Silver Strand shoreline project at Imperial Beach, California; to the Committee on Environment and Public Works.

EC–2076. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, a report entitled ''Report to Congress on Abnormal Occurrences, Fiscal Year 2004''; to the Committee on Environment and Public Works.

EC–2077. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Quality Redesignation for the 8-Hour Ozone National Ambient Air Quality Standard; for some Counties in the States of Kansas and Missouri'' (FRL NO. 7906–5) received on May 3, 2005; to the Committee on Environment and Public Works.

EC–2078. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa'' (FRL NO. 7906–9) received on May 3, 2005; to the Committee on Environment and Public Works.

EC–2079. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri'' (FRL NO. 7906–7) received on May 3, 2005; to the Committee on Environment and Public Works.

EC–2080. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Implementation Plans; Michigan: Oxides of Nitrogen'' (FRL NO. 7904–4) received on May 3, 2005; to the Committee on Environment and Public Works.

EC–2081. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Determination of Attainment for the Ozone and Carbon Monoxide National Ambient Air Quality Standards in Washoe County, Nevada'' (FRL NO. 7907–3) received on May 3, 2005; to the Committee on Environment and Public Works.

EC–2082. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; 1-Hour Ozone Attainment Plans, Rate-of-Progress Plans, Contingency Measures, Transportation Control Measures, VMT Offset, and 1990 Base Year Inventory'' (FRL NO. 7910–3) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2083. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; VOC Emission Standards for AIM Coatings'' (FRL NO. 7909–8) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2084. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Georgia: Approval of Revisions to the Georgia State Implementation Plan'' (FRL NO. 7909–3) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2085. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Non-Regulatory Voluntary Emission Reduction Program Measures'' (FRL NO. 7909–9) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2086. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions from AIM Coatings'' (FRL NO. 7910–2) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2087. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland; Metropolitan Washington, D.C. 1-Hour Ozone Attainment Demonstration Plans'' (FRL NO. 7910–4) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2088. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; State of Washington; Spokane Carbon Monoxide Attainment Plan'' (FRL NO. 7906–3) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2089. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emissions Standards for AIM Coatings'' (FRL NO. 7910–1) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2090. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Transportation Conformity Rule Amendments for the New $PM_{2.5}$ National Ambient Air Quality Standard: $PM_{2.5}$ Precursors'' (FRL NO. 7908–3) received on May 8, 2005; to the Committee on Environment and Public Works.

EC–2091. A communication from the Secretary of the Army, transmitting, pursuant to law, a report relative to the Program Acquisitions Unit Cost (PAUC) for the Chemical Demilitarization (CHEM DEMIL) Program; to the Committee on Armed Services.

EC–2092. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law the quarterly report entitled ''Acceptance of Contributions for Defense Programs, Projects, and Activities; Defense Cooperation Account''; to the Committee on Armed Services.

EC–2093. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–2094. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense transmitting, pursuant to law, a report relative to the Department's implementation of postal system improvements; to the Committee on Armed Services.

EC–2095. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense transmitting, pursuant to law, a report relative to the Chemical Demilitarization (Chem Demil)-Chemical Materials Agency (CMA) and Chem Demil-CMA Newport major defense acquisition programs; to the Committee on Armed Services.

EC–2096. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, transmitting, pursuant to law, the Selected Acquisition Reports (SARs) for the quarter ending December 31, 2004; to the Committee on Armed Services.

EC–2097. A communication from the Principal Deputy, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report on the Department's status and results of the ''National Call to Service'' program for Fiscal Year 2004; to the Committee on Armed Services.

EC–2098. A communication from the Secretary of the Senate, transmitting, pursuant to law, the report of the receipts and expenditures of the Senate for the period from October 1, 2004 through March 31, 2005; ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ENZI, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 285. A bill to reauthorize the Children's Hospitals Graduate Medical Education Program (Rept. No. 109–66).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself, Mrs. HUTCHISON, Mr. DURBIN, Ms. SNOWE, Mr. LEAHY, Mr. FEINGOLD, and Mrs. LINCOLN):

S. 994. A bill to authorize the Attorney General to make grants to improve the ability of State and local governments to prevent the abduction of children by family members, and for other purposes; to the Committee on the Judiciary.

By Mr. CORNYN (for himself and Mrs. HUTCHISON):

S. 995. A bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to designate the La Entrada al Pacifico Corridor in the State of Texas as a high priority corridor on the National Highway System; to the Committee on Environment and Public Works.

By Mr. BURNS (for himself, Mr. ENZI, and Mr. THUNE):

S. 996. A bill to improve the Veterans Beneficiary Travel Program of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. BURNS:

S. 997. A bill to direct the Secretary of Agriculture to convey certain land in the Beaverhead-Deerlodge Forest, Montana, to Jefferson County, Montana, for use as a cemetery; to the Committee on Energy and Natural Resources.

By Mr. CRAPO (for himself and Mr. CRAIG):

S. 998. A bill to include the State of Idaho as an affected area under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note); to the Committee on the Judiciary.

By Mr. WYDEN (for himself and Mr. SMITH):

S. 999. A bill to provide for a public response to the public health crisis of pain, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN:

S. 1000. A bill to amend the Public Health Service Act to increase the number of permanent faculty in palliative care medicine at accredited allopathic and osteopathic medical schools and to promote the development of faculty careers as academic palliative specialists who emphasize teaching; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN:

S. 1001. A bill to establish hospice demonstration projects and a hospice grant program for beneficiaries under the medicare program under title XVIII of the Social Security Act, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 1002. A bill to amend title XVIII of the Social Security Act to make improvements in payments to hospitals under the medicare program, and for other purposes; to the Committee on Finance.

By Mr. MCCAIN:

S. 1003. A bill to amend the Act of December 22, 1974, and for other purposes; to the Committee on Indian Affairs.

By Mr. ALLEN (for himself, Mr. SMITH, and Mr. ENSIGN):

S. 1004. A bill to provide the Federal Trade Commission with the resources necessary to protect users of the Internet from the unfair and deceptive acts and practices associated with spyware, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LUGAR:

S. 1005. A bill to amend the Richard B. Russell National School Lunch Act to permit certain summer food pilot programs to be carried out in all States and by all service institutions; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KYL (for himself, Mrs. HUTCHISON, and Mr. CORNYN):

S. 1006. A bill to reimburse States and local governments for indirect costs relating to the incarceration of illegal criminal aliens; to the Committee on the Judiciary.

By Mr. BINGAMAN (for himself, Ms. SNOWE, Mr. ROCKEFELLER, Mrs. HUTCHISON, Mr. REID, and Mr. JEFFORDS):

S. 1007. A bill to prevent a severe reduction in the Federal medical assistance percentage determined for a State for fiscal year 2006; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 58

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. 58, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 98

At the request of Ms. STABENOW, her name was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

At the request of Mr. ALLARD, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Maine (Ms. SNOWE) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 98, supra.

S. 103

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 103, a bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes.

S. 147

At the request of Mr. AKAKA, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 147, a bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

S. 241

At the request of Ms. SNOWE, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. 241, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as

universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

S. 283

At the request of Mrs. DOLE, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 283, a bill to amend the Internal Revenue Code of 1986 to provide a tax credit for the transportation of food for charitable purposes.

S. 329

At the request of Mr. ROCKEFELLER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 329, a bill to amend title 11, United States Code, to increase the amount of unsecured claims for salaries and wages given priority in bankruptcy, to provide for cash payments to retirees to compensate for lost health insurance benefits resulting from the bankruptcy of their former employer, and for other purposes.

S. 390

At the request of Mr. DODD, the names of the Senator from Minnesota (Mr. COLEMAN), the Senator from Washington (Mrs. MURRAY), the Senator from Illinois (Mr. DURBIN) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 390, a bill to amend title XVIII of the Social Security Act to provide for coverage of ultrasound screening for abdominal aortic aneurysms under part B of the medicare program.

S. 424

At the request of Mr. BOND, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 484

At the request of Mr. WARNER, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 493

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 493, a bill to amend title II of the Higher Education Act of 1965 to increase teacher familiarity with the educational needs of gifted and talented students, and for other purposes.

S. 495

At the request of Mr. CORZINE, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 495, a bill to impose sanctions against perpetrators of crimes against humanity in Darfur, Sudan, and for other purposes.

S. 512

At the request of Mr. SANTORUM, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S. 512, a bill to amend the Internal Revenue Code of 1986 to classify automatic fire sprinkler systems as 5-year property for purposes of depreciation.

S. 513

At the request of Mr. GREGG, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 513, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 566

At the request of Mr. ROCKEFELLER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 566, a bill to continue State coverage of medicaid prescription drug coverage to medicare dual eligible beneficiaries for 6 months while still allowing the medicare part D benefit to be implemented as scheduled.

S. 602

At the request of Ms. MIKULSKI, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 602, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. 604

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 604, a bill to amend title XVIII of the Social Security Act to authorize expansion of medicare coverage of medical nutrition therapy services.

S. 633

At the request of Mr. JOHNSON, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 633, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 695

At the request of Mr. COCHRAN, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from North Dakota (Mr. CONRAD) were added as cosponsors of S. 695, a bill to suspend temporarily new shipper bonding privileges.

S. 756

At the request of Mr. BENNETT, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 756, a bill to amend the Public Health Service Act to enhance public and health professional awareness and understanding of lupus and to strengthen the Nation's research efforts to identify the causes and cure of lupus.

S. 776

At the request of Mr. JOHNSON, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 776, a bill to designate certain functions performed at flight service stations of the Federal Aviation Administration as inherently governmental functions, and for other purposes.

S. 832

At the request of Mr. TALENT, his name was added as a cosponsor of S. 832, a bill to amend the Internal Revenue Code of 1986 to provide taxpayer protection and assistance, and for other purposes.

S. 841

At the request of Mrs. CLINTON, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 841, a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

S. 894

At the request of Mr. ENZI, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 894, a bill to allow travel between the United States and Cuba.

S. 895

At the request of Mr. DOMENICI, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 895, a bill to direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States to provide a clean, safe, affordable, and reliable water supply to rural residents.

S. 918

At the request of Mr. OBAMA, the names of the Senator from Colorado (Mr. SALAZAR) and the Senator from Indiana (Mr. LUGAR) were withdrawn as cosponsors of S. 918, a bill to provide for Flexible Fuel Vehicle (FFV) refueling capability at new and existing refueling station facilities to promote energy security and reduction of greenhouse gas emissions.

S. 991

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 991, a bill to amend title I of the Employee Retirement Income Security Act of 1974 to limit the availability of benefits under an employer's nonqualified deferred compensation plans in the event that any of the employer's defined benefit pension plans are subjected to a distress or PBGC termination in connection with bankruptcy reorganization or a conversion to a cash balance plan, to provide appropriate funding restrictions in connection with the maintenance of nonqualified deferred compensation plans, and to provide for appropriate disclosure with respect to nonqualified deferred compensation plans.

S.J. RES. 15

At the request of Mr. BROWNBACK, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S.J. Res. 15, a joint resolution to acknowledge a long history of official

depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States.

S. RES. 124

At the request of Mr. HAGEL, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. Res. 124, a resolution recognizing the importance of increasing awareness of autism spectrum disorders, supporting programs for increased research and improved treatment of autism, and improving training and support for individuals with autism and those who care for individuals with autism.

AMENDMENT NO. 595

At the request of Mr. OBAMA, the names of the Senator from Indiana (Mr. LUGAR), the Senator from Colorado (Mr. SALAZAR), the Senator from Iowa (Mr. HARKIN), the Senator from Indiana (Mr. BAYH), the Senator from Illinois (Mr. DURBIN), the Senator from Minnesota (Mr. COLEMAN), the Senator from Missouri (Mr. TALENT) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of amendment No. 595 intended to be proposed to H.R. 3, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 609

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 609 intended to be proposed to H.R. 3, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Mrs. HUTCHISON, Mr. DURBIN, Ms. SNOWE, Mr. LEAHY, Mr. FEINGOLD, and Mrs. LINCOLN):

S. 994. A bill to authorize the Attorney General to make grants to improve the ability of State and local governments to prevent the abduction of children by family members, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise today along with Senators HUTCHISON, DURBIN, SNOWE, LEAHY and FEINGOLD to reintroduce the ''Family Abduction Prevention Act of 2005,'' a bill to help the thousands of children who are abducted by a family member each year. We introduced this legislation last Congress, but it is just as needed today as it was then.

Family abductions are the most common form of abduction, yet they receive little attention, and law enforcement often doesn't treat them as the serious crimes that they are.

The Family Abduction Prevention Act of 2005 would provide grants to States for costs associated with family abduction prevention. Specifically, it would assist States with: costs associated with the extradition of individuals suspected of committing the crime of family abduction; costs borne by State and local law enforcement agencies to investigate cases of missing children; training for local and State law enforcement agencies in responding to family abductions; outreach and media campaigns to educate parents on the dangers of family abductions; and assistance to public schools to help with costs associated with ''flagging'' school records.

Each year, over 200,000 children—78 percent of all abductions in the United States—are kidnapped by a family member, usually a non-custodial parent.

More than half of abducting parents have a history of domestic violence, substance abuse, or a criminal record.

Most State and local law enforcement agencies do not treat these abductions as serious crimes. Approximately 70 percent of law enforcement agencies do not have written guidelines on responding to family abduction and many are not informed about the Federal laws available to help in the search and recovery of an abducted child.

Many people believe that a child is not in grave danger if the abductor is a family member. Unfortunately, this is not true, and this assumption can endanger a child's life. Research shows that the most common motive in family abduction cases is revenge against the other parent—not love for the child.

The effects of family abduction on children are very traumatic. Abducted children suffer from severe separation anxiety. To break emotional ties with the left-behind parent, some family abductors will coach a child into falsely disclosing abuse by the other parent to perpetuate their control during or after abduction. The child is often told that the other parent is dead or did not really love them.

As the child adapts to a fugitive's lifestyle, deception becomes a part of life. The child is taught to fear those that one would normally trust, such as police, doctors, teachers and counselors. Even after recovery, the child often has a difficult time growing into adulthood.

Let me give an illustrative example about a girl named Rebekah. On Takeroot.org, a website devoted to victims of family abductions, Rebekah told the story of when her mother kidnapped her.

Her mother was diagnosed as manic and was verbally abusive to her children and husband. Rebekah's father was awarded full custody of her and her brothers. However, one weekend, when Rebekah was 4-years-old, her mother took her to Texas.

Her mother had all Rebekah's moles and distinguishing marks removed from her body and she had fake birth certificates made for Rebekah and herself. As Rebekah grew up, she was told that her father didn't love her and that her siblings didn't want to see her. When the FBI finally found Rebekah, she didn't remember her father and felt very alone.

In addition, in many family abduction cases, children are given new identities at an age when they are still developing a sense of who they are. In extreme cases, the child's sexual identity is covered up to avoid detection.

Abducting parents often deprive their children of education and much-needed medical attention to avoid the risk of being tracked via school or medical records.

In some cases, the abducting parent leaves the child with strangers at an underground ''safe house'' where health, safety, and other basic needs are extremely compromised.

For example, in Lafayette, CA, two girls were abducted by their mother and moved from house to house under the control of a convicted child molester. Kelli Nunez absconded with her daughters, 6-year-old Anna and 4-year-old Emily in violation of court custody orders. Nunez drove her daughters cross-country, and then returned by plane to San Francisco, where she handed the children to someone holding a coded sign at the airport.

The person holding the sign belonged to an underground vigilante group called the California Family Law Center led by Florencio Maning, a convicted child molester. For six months, Maning orchestrated the concealment of the Nunez girls with help from other people. Luckily, police were able to track down the girls, and they were successfully reunited with their father.

California has been the Nation's leader in fighting family abduction. In my State, we have a system that places the responsibility for the investigation and resolution of family abduction cases with the County District Attorney's Office. Each California County District Attorney's Office has an investigative unit that is focused on family abduction cases. These investigators only handle family abduction cases and become experts in the process.

However, most States lack the training and resources to effectively recover children who are kidnapped by a family member. According to a study conducted by Plass, Finkelhor and Hotaling, 62 percent of parents surveyed said they were ''somewhat'' or ''very'' dissatisfied with police handling of their family abduction cases.

The ''Family Abduction Prevention Act of 2005'' would be an important first step in addressing this serious issue.

I urge my colleagues to quickly act on this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 994

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family Abduction Prevention Act of 2005''.

SEC. 2. FINDINGS.

Congress findings that—

(1) each year more than 203,000 children in the United States (approximately 78 percent of all abducted children) are abducted by a family member, usually a parent;

(2) more than half of the parents who abduct their children have a history of alcohol or substance abuse, a criminal record, or a history of violence;

(3) the most common motive for family abduction is revenge against the other parent, not protecting the child's safety;

(4) children who are abducted by family members suffer emotional, psychological, and often physical abuse at the hands of their abductors;

(5) children who are victims of family abductions are forced to leave behind family, friends, their homes, their neighborhoods, their schools, and all that is familiar to them;

(6) children who are victims of family abductions are often told that the parent who did not abduct the child has died, does not love them, or will harm them;

(7) children who are abducted by their parents or other family members are sometimes forced to live in fear of discovery and may be compelled to conceal their true identity, including their real names, family histories, and even their gender;

(8) children who are victims of family abductions are often denied the opportunity to attend school or to receive health and dental care;

(9) child psychologists and law enforcement authorities now classify family abduction as a form of child abuse;

(10) approximately 70 percent of local law enforcement agencies do not have written guidelines for what to do in the event of a family abduction or how to facilitate the recovery of an abducted child;

(11) the first few hours of a family abduction are crucial to recovering an abducted child, and valuable hours are lost when law enforcement is not prepared to employ the most effective techniques to locate and recover abducted children;

(12) when parents who may be inclined to abduct their own children receive counseling and education on the harm suffered by children under these circumstances, the incidence of family abductions is greatly reduced; and

(13) where practiced, the flagging of school records has proven to be an effective tool in assisting law enforcement authorities find abducted children.

SEC. 3. DEFINITIONS.

In this Act:

(1) FAMILY ABDUCTION.—The term ''family abduction'' means the taking, keeping, or concealing of a child or children by a parent, other family member, or person acting on behalf of the parent or family member, that prevents another individual from exercising lawful custody or visitation rights.

(2) FLAGGING.—The term ''flagging'' means the process of notifying law enforcement authorities of the name and address of any person requesting the school records of an abducted child.

(3) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(4) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any territory or possession of the United States, and any Indian tribe.

SEC. 4. GRANTS TO STATES.

(a) MATCHING GRANTS.—The Attorney General shall make grants to States for projects involving—

(1) the extradition of individuals suspected of committing a family abduction;

(2) the investigation by State and local law enforcement agencies of family abduction cases;

(3) the training of State and local law enforcement agencies in responding to family abductions and recovering abducted children, including the development of written guidelines and technical assistance;

(4) outreach and media campaigns to educate parents on the dangers of family abductions; and

(5) the flagging of school records.

(b) MATCHING REQUIREMENT.—Not less than 50 percent of the cost of a project for which a grant is made under this section shall be provided by non-Federal sources.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated to the Attorney General $500,000 for fiscal year 2006 and such sums as may be necessary for each of fiscal years 2007 and 2008.

Mr. BURNS (for himself, Mr. ENZI, and Mr. THUNE):

S. 996. A bill to improve the Veterans Beneficiary Travel Program of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

Mr. BURNS. Mr. President, today, I join my colleagues, Senator ENZI and Senator THUNE in introducing ''The Veterans Road to Health Care Act of 2005.''

Montana veterans are often forced to travel hundreds of miles throughout our great State to receive the healthcare they need. Whether traveling to the only Veterans' Administration (VA) hospital located just outside of Helena at Fort Harrison, or to one of the eight Community Based Outpatient Clinics, CBOCs, the distances traveled by our veterans is great. We have a lot of dirt between light bulbs in Montana. This distance, combined with the increase in gas prices and the cost of lodging for veterans and their families adds up quickly. Many of these folks do not have any other option for their health care, and I think that anything which can be done to help those who are travel eligible would be appreciated.

The Veterans Road to Health Care Act of 2005 would help ease this burden by raising the travel reimbursement rate for veterans who must travel to VA facilities for treatment. The current reimbursement rate of 11 cents per mile would be increased to the Federal rate of 40.5 cents per mile. It seems only fair that veterans who have sacrificed so much for this country receive the same compensation as Federal employees.

My bill would also allow payment under the Travel Beneficiary Program to veterans who cannot receive adequate care at their VA facility and are thereby forced to travel to another care center for specialized treatment. This referral to another facility for additional treatment often increases the costs for veterans from rural States like Montana, who must make another trip and sometimes travel even longer distances, for medical assistance.

It is important that veterans in rural areas receive fair compensation, as they travel to obtain healthcare. I want to acknowledge Senators ENZI and THUNE for joining me in support of this bill. Their work on this and all other veterans' issues is to be commended, and I look forward to working with them and my other Senate colleagues to pass this important piece of legislation. We need to do this for veterans in Montana and other rural areas across the country.

Mr. ENZI. Mr. President, I rise today in strong support of the Veterans Road to Health Care Act of 2005 that I introduced with my colleagues Senator BURNS and Senator THUNE. This legislation would raise the travel reimbursement rate for veterans who must travel to Department of Veterans Affairs' hospitals for treatment. The current reimbursement rate is 11 cents per mile. This bill would raise that figure to match the Federal employees travel reimbursement rate which is 40.5 cents per mile.

The average price for gas in Wyoming right now is $2.20 per gallon. The current rate of 11 cents per mile barely makes a dent in the expenses incurred by veterans who have no choice but to travel by automobile for health care. I have received numerous letters from veterans in Wyoming describing how difficult it is to work into their budget the money necessary to travel between their hometown and the VA hospital. Being able to access health care is vital; veterans should not have to choose between driving to receive needed treatment and being able to afford other necessities.

In Wyoming, we have two VA Medical Centers, one in Cheyenne and one in Sheridan. Veterans have to travel to one of these facilities to be treated for health conditions and be covered by the health care plan that the government provides for them. This poses a serious problem in terms of travel expense, especially with the rise in gasoline prices. Some towns in Wyoming are over 300 miles away from the nearest VA facility. A veteran living in Riverton must drive 215 miles to the Sheridan facility or nearly 300 to the Cheyenne facility. This problem is then compounded when these facilities, which provide great service for our veterans, must refer the veterans to a larger hospital in Salt Lake City or Denver for additional treatment or procedures.

This bill addresses the health care of veterans who have special needs. It would allow veterans who have been referred to a special care center by their VA physician to be reimbursed under

the Travel Beneficiary Program for their travel to the specialized facility. This applies only to those veterans who cannot receive adequate care at their VA facility.

This legislation is important to all veterans, but it is especially significant to those veterans who live in rural states, like my home State of Wyoming. Rural States are less populated; there is greater distance between towns and far fewer options for transportation. Wyoming has miles and miles of miles and miles. Cars are the main mode of transportation and many times the only option.

It is our duty to compensate our servicemen and women for the sacrifices that they made defending the freedoms of this country. With our current recruitment and retention problems in the military, it is our Nation's responsibility to give veterans the kind of access to healthcare they have earned through their service to our country. The rising cost of gasoline should not be a factor for veterans to ignore their health concerns because they cannot afford to travel to the nearest veterans' clinic. I strongly urge my colleagues to support this important bill.

By Mr. BURNS:

S. 997. A bill to direct the Secretary of Agriculture to convey land in the Beaverhead-Deerlodge Forest, Montana, to Jefferson County, Montana, for use as a cemetery; to the Committee on Energy and Natural Resources.

Mr. BURNS. Mr. President, this bill conveys 3.4 acres on the Beaverhead-Deerlodge National Forest to Jefferson County, MT for continued use as a cemetery.

The Elkhorn Cemetery in Jefferson County has been used as a cemetery since the 1860's. Due to surveying errors and limited information when the National Forest boundaries were surveyed in the early 1900's, the cemetery was included as National Forest lands. The cemetery is still in use by local families who homesteaded and worked the mines in the area. However, Forest Service manual direction strongly discourages burials on National Forest lands, placing both the families and Forest Service in an awkward position.

It is clear the cemetery should not have been included as part of the National Forest. The County Commissioners and the local public strongly support the conveyance.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 997

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Montana Cemetery Act of 2005''.

SEC. 2. CONVEYANCE TO JEFFERSON COUNTY, MONTANA.

(a) CONVEYANCE.—Not later than 180 days after the date of enactment of this Act and subject to valid existing rights, the Secretary of Agriculture (referred to in this Act as the ''Secretary''), acting through the Chief of the Forest Service, shall convey to Jefferson County, Montana, for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of National Forest System land (including any improvements on the land) known as the Elkhorn Cemetery, which consists of 10 acres in Jefferson County located in SW1/4 Sec. 14, T. 6 N., R. 3 W.

(c) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions for the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

By Mr. CRAPO (for himself and Mr. CRAIG):

S. 998. A bill to include the State of Idaho as an affected area under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note); to the committee on the Judiciary.

Mr. CRAPO. Mr. President, in the 1950s and 1960s, this country was in the midst of a cold war and arms race, a race to perfect the hydrogen bomb. To win the race, nuclear weapons technology was developed using above ground testing in Idaho's neighbor to the south, Nevada. During these tests, Idahoans recount going outside in the evenings to look at the beautiful sunsets caused by the testing. Unfortunately and unbeknown to them, these skies were filled with dangerous radiation that very much elevated their exposure and subsequent risk of developing cancer.

I will not debate whether government authorities adequately knew the extent of the long-term dangers to radiation exposure. However, after a long and protracted discussion in this very chamber, Congress did recognize that what had occurred during this time of nuclear testing and rightly came forward providing for compensation through the Radiation Exposure Compensation Act of 1990 (RECA). This bill said that if you lived in certain counties in certain States during a certain period of time and had specified diseases, you were eligible for compensation. It is now time to review that program and make it work for everyone who may have become ill because of radiation fall-out exposure.

The criteria established in the Act were driven by limited scientific knowledge and political expediency. This was recognized in 1999, when a group of Senators, led by Senator HATCH, amended RECA to include additional counties in Arizona. During the floor debate at the time, Senator HATCH said, ''Through advances in science, we now know so much more about the effects of radiation than we did in the late 1950s and 1960s. Our current state of scientific knowledge allows us to pinpoint with more accuracy which diseases are reasonably believed to be related to radiation exposure, and that is what necessitated the legislation we are considering today.''

But the truth is even more encompassing than a few more counties. According to a report from the National Academies of Sciences, a report commissioned by Congress, radiation fallout didn't know any arbitrary geographic boundaries. It didn't stop because it crossed a State or county line. The NAS report, released last month, clearly demonstrated that we continue to be wide of the mark in who is eligible for compensation and that is why I am introducing legislation today to bring RECA back on course. Information used to establish who would be eligible for compensation failed to recognize that four counties in Idaho ranked in the top five in having the highest per capita thyroid dosage of radiation in the nation, more than any county currently recognized by RECA for eligibility. This clear inequity must be rectified; Idaho has a documented history of high cancer rates in people who lived in these areas during testing.

At this time I would like to thank people like Sheri Garmon, Kathy Skippen, Tona Henderson, and so many others who have spent time and energy on this issue. Some like Sheri are fighting multiple cancers and yet have taken the time to pursue their belief that they to deserved to be eligible for the RECA program. The NAS report recognizes that the RECA program needs revamping, but Idahoans deserve equal treatment with those in Utah, Arizona, and Nevada now. They should not have to wait while Congress comes up with a better way to administer this program. That is why I am introducing legislation today that will extend the present program to cover the full State of Idaho. And I am encouraging my colleagues to work with me on making the entire RECA program more comprehensive for the future.

It is the right thing to do.

By Mr. WYDEN (for himself and Mr. SMITH):

S. 999. A bill to provide for a public response to the public health crisis of pain, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN:

S. 1000. A bill to amend the Public Health Service Act to increase the number of permanent faculty in palliative care medicine at accredited allopathic and osteopathic medical schools and to promote the development of faculty careers as academic palliative specialists who emphasize teaching; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN

S. 1001. A bill to establish hospice demonstration projects and a hospice grant program for beneficiaries under the medicare program under title XVII

of the Social Security Act, and for other purposes; to the Committee on Finance.

Mr. WYDEN. Mr. President, several weeks ago, I outlined what I believed this country needs to do in order to address the true issues related to how we care for those who are dying. Today, I am introducing 3 bills to improve access to pain management, increase the number of providers trained to care for those with life-threatening illness, and improve the Medicare hospice benefit.

Our medical system is geared towards curing patients, and gives short shrift to those we cannot cure. Modern advances in technology allow us to live longer, but that also means that many of us will live longer with chronic diseases including pain.

The Conquering Pain Act will help those patients living and dying in pain, support their families and assist providers in getting information and guidance. This legislation will provide an opportunity for the country to develop and test different ways of providing pain management to patients 24 hours a day, seven days a week. It would create and fund regional networks to assist patients so they would not have to wait until normal business hours to get relief and help providers receive timely information and guidance as they treat difficult cases. This bill would create a website and require access to it in health care settings so families, patients and providers can have instant information. In addition, the bill requires several studies so we can better understand the other roadblocks for patients seeking pain management. These roadblocks include the lack of health insurance coverage for pain management and the interaction of the enforcement of laws concerning controlled substances and the delivery of appropriate pain management. I am pleased that my colleague from Oregon is cosponsoring the Conquering Pain Act.

Another aspect of our health care system that needs strengthening, is in assuring that we have providers who know how to provide support and comfort care to the dying. The Palliative Care Training Act will increase the number of providers trained in palliative care. Palliative care is an approach that improves the quality of life of patients and their families facing the problems associated with life-threatening illness. It does so through the prevention and relief of suffering by early identification, assessment and treatment of pain and other problems. Palliative care affirms life and regards dying as a normal process. It neither hastens nor postpones death and is applicable early in the course of illness, in conjunction with other therapies that are intended to prolong life, such as chemotherapy or radiation therapy, and offers a support system to help patients live as actively as possible until death.

My legislation provides grants to individuals with appointments as junior faculty at accredited medical schools so they will teach other providers palliative care. This is modeled after existing awards for the training of other specialties. When it comes down to it, assuring there is faculty in schools to teach this area of medicine, is an inexpensive way of strengthening the health care system in providing this needed care. I am pleased to note that when the National Hospice and Palliative Care Association recently testified before the Senate Health, Education and Labor Committee, they identified this legislation as addressing an important need.

As we look at how to better care for those at the end of life, Medicare's hospice benefit bears examination. When the benefit was added to Medicare, it was hailed as a cost effective benefit that would assist many. In truth, few Americans know what hospice really is and the benefits it can provide. Too often seniors are advised of the benefits too late to get the full effect of the medical, social and spiritual support this benefit can provide. Part of the reason for this is Medicare requires the patient to choose between continuing to seek ''curative'' care or hospice and palliative care. This means that literally the patient must choose between the hope of a cure and accepting that they are dying. Not many of us would want to give up seeking a cure or want to give up hope. However, that is what the Medicare program requires now. The Medicare Hospice Demonstration Act tests the idea that patients would not have to give up seeking ''curative'' care, to get hospice. It is my belief that as people experience what hospice can do for them and for their families, they will find they can accept living the end of their lives with hospice and palliative care instead of seeking less effective care that will not cure them or enhance the quality of their life.

It the U.S. Senate is going to examine end of life issues, we should not just look at legal issues. I believe these proposals are essential elements of the health care system that need to be supported and strengthened.

I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 999

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Conquering Pain Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Findings.
Sec. 3. Definitions.
TITLE I—EMERGENCY RESPONSE TO THE PUBLIC HEALTH CRISIS OF PAIN
Sec. 101. Guidelines for the treatment of pain.
Sec. 102. Patient expectations to have pain and symptom management.
Sec. 103. Quality improvement projects.
Sec. 104. Pain coverage quality evaluation and information.
Sec. 105. Surgeon General's report.
TITLE II—DEVELOPING COMMUNITY RESOURCES
Sec. 201. Family support networks in pain and symptom management.
TITLE III—REIMBURSEMENT BARRIERS
Sec. 301. Reimbursement barriers report.
Sec. 302. Insurance coverage of pain and symptom management.
TITLE IV—IMPROVING FEDERAL COORDINATION OF POLICY, RESEARCH, AND INFORMATION
Sec. 401. Advisory Committee on Pain and Symptom Management.
Sec. 402. Institutes of Medicine report on controlled substance regulation and the use of pain medications.
Sec. 403. Conference on pain research and care.
TITLE V—DEMONSTRATION PROJECTS
Sec. 501. Provider performance standards for improvement in pain and symptom management.
Sec. 502. End of life care demonstration projects.

SEC. 2. FINDINGS.

Congress finds that—

(1) pain is often left untreated or undertreated especially among older patients, African Americans, Hispanics and other minorities, and children;

(2) chronic pain is a public health problem affecting at least 50,000,000 Americans through some form of persisting or recurring symptom;

(3) 40 to 50 percent of patients experience moderate to severe pain at least half the time in their last days of life;

(4) 70 to 80 percent of cancer patients experience significant pain during their illness;

(5) one in 7 nursing home residents experience persistent pain that may diminish their quality of life;

(6) despite the best intentions of physicians, nurses, pharmacists, and other health care professionals, pain is often under-treated because of the inadequate training of clinicians in pain management;

(7) despite the best intentions of physicians, nurses, pharmacists, mental health professionals, and other health care professionals, pain and symptom management is often suboptimal because the health care system has focused on cure of disease rather than the management of a patient's pain and other symptoms;

(8) the technology and scientific basis to adequately manage most pain is known;

(9) pain should be considered the fifth vital sign; and

(10) coordination of Federal efforts is needed to improve access to high quality effective pain and symptom management in order to assure the needs of chronic pain patients and those who are terminally ill are met.

SEC. 3. DEFINITIONS.

In this Act:

(1) CHRONIC PAIN.—The term ''chronic pain'' means a pain state that is persistent and in which the cause of the pain cannot be removed or otherwise alleviated. Such term includes pain that may be associated with long-term incurable or intractable medical conditions or disease.

(2) END OF LIFE CARE.—The term ''end of life care'' means a range of services, including hospice care, provided to a patient, in the final stages of his or her life, who is suffering from 1 or more conditions for which treatment toward a cure or reasonable improvement is not possible, and whose focus of care is palliative rather than curative.

(3) FAMILY SUPPORT NETWORK.—The term ''family support network'' means an association of 2 or more individuals or entities in a collaborative effort to develop multi-disciplinary integrated patient care approaches that involve medical staff and ancillary services to provide support to chronic pain patients and patients at the end of life and their caregivers across a broad range of settings in which pain management might be delivered.

(4) HOSPICE.—The term ''hospice care'' has the meaning given such term in section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)).

(5) MEDICATION THERAPY MANAGEMENT SERVICES.—The term ''medication therapy management services'' means consultations with a physician or other health care professional (including a pharmacist) who is practicing within the scope of the professional's license, concerning a patient which results in—

(A) a change in the drug regimen of the patient to avoid an adverse drug interaction with another drug or disease state;

(B) a change in inappropriate drug dosage or dosage form with respect to the patient;

(C) discontinuing an unnecessary or harmful medication with respect to the patient;

(D) an initiation of medication therapy for a medical condition of the patient;

(E) consultation with the patient or a caregiver in a manner that results in a significant improvement in drug regimen compliance; or

(F) patient and caregiver understanding of the appropriate use and adherence to medication therapy.

(6) PAIN AND SYMPTOM MANAGEMENT.—The term ''pain and symptom management'' means services provided to relieve physical or psychological pain or suffering, including any 1 or more of the following physical complaints—

(A) weakness and fatigue;

(B) shortness of breath;

(C) nausea and vomiting;

(D) diminished appetite;

(E) wasting of muscle mass;

(F) difficulty in swallowing;

(G) bowel problems;

(H) dry mouth;

(I) failure of lymph drainage resulting in tissue swelling;

(J) confusion;

(K) dementia;

(L) delirium;

(M) anxiety;

(N) depression; and

(O) other related symptoms

(7) PALLIATIVE CARE.—The term ''palliative care'' means the total care of patients whose disease is not responsive to curative treatment, the goal of which is to provide the best quality of life for such patients and their families. Such care—

(A) may include the control of pain and of other symptoms, including psychological, social and spiritual problems;

(B) affirms life and regards dying as a normal process;

(C) provides relief from pain and other distressing symptoms;

(D) integrates the psychological and spiritual aspects of patient care;

(E) offers a support system to help patients live as actively as possible until death; and

(F) offers a support system to help the family cope during the patient's illness and in their own bereavement.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

TITLE I—EMERGENCY RESPONSE TO THE PUBLIC HEALTH CRISIS OF PAIN

SEC. 101. GUIDELINES FOR THE TREATMENT OF PAIN.

(a) DEVELOPMENT OF WEBSITE.—Not later than 2 months after the date of enactment of this Act, the Secretary, acting through the Agency for Healthcare Research and Quality, shall develop and maintain an Internet website to provide information to individuals, health care practitioners, and health facilities concerning evidence-based practice guidelines developed for the treatment of physical and psychological pain. Websites in existence on such date may be used if such websites meet the requirements of this section.

(b) REQUIREMENTS.—The website established under subsection (a) shall—

(1) be designed to be quickly referenced by health care practitioners; and

(2) provide for the updating of guidelines as scientific data warrants.

(c) PROVIDER ACCESS TO GUIDELINES.—

(1) IN GENERAL.—In establishing the website under subsection (a), the Secretary shall ensure that health care facilities have made the website known to health care practitioners and that the website is easily available to all health care personnel providing care or services at a health care facility.

(2) USE OF CERTAIN EQUIPMENT.—In making the information described in paragraph (1) available to health care personnel, the facility involved shall—

(A) ensure that such personnel have access to the website through the computer equipment of the facility;

(B) carry out efforts to inform personnel at the facility of the location of such equipment; and

(C) ensure that patients, caregivers, and support groups are provided with access to the website.

(3) RURAL AREAS.—

(A) IN GENERAL.—A health care facility, particularly a facility located in a rural or underserved area, without access to the Internet shall provide an alternative means of providing practice guideline information to all health care personnel.

(B) ALTERNATIVE MEANS.—The Secretary shall determine appropriate alternative means by which a health care facility may make available practice guideline information on a 24-hour basis, 7 days a week if the facility does not have Internet access. The criteria for adopting such alternative means should be clear in permitting facilities to develop alternative means without placing a significant financial burden on the facility and in permitting flexibility for facilities to develop alternative means of making guidelines available. Such criteria shall be published in the Federal Register.

SEC. 102. PATIENT EXPECTATIONS TO HAVE PAIN AND SYMPTOM MANAGEMENT.

(a) IN GENERAL.—The administrator of each of the programs described in subsection (b) shall ensure that, as part of any informational materials provided to individuals under such programs, such materials shall include information, where relevant, to inform such individuals that they should expect to have their pain assessed and should expect to be provided with effective pain and symptom relief, when receiving benefits under such program.

(b) PROGRAMS.—The programs described in this subsection shall include—

(1) the medicare and medicaid programs under titles XIX and XXI of the Social Security Act (42 U.S.C. 1935 et seq., 1936 et seq.);

(2) programs carried out through the Public Health Service;

(3) programs carried out through the Indian Health Service;

(4) programs carried out through health centers under section 330 of the Public Health Service Act (42 U.S.C. 254b);

(5) the Federal Employee Health Benefits Program under title 5, United States Code;

(6) the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) as defined in section 1073(4) of title 10, United States Code; and

(7) other programs administered by the Secretary.

SEC. 103. QUALITY IMPROVEMENT EDUCATION PROJECTS.

The Secretary shall provide funds for the implementation of special education projects, in as many States as is practicable, to be carried out by peer review organizations of the type described in section 1152 of the Social Security Act (42 U.S.C. 1320c–1) to improve the quality of pain and symptom management. Such projects shall place an emphasis on improving pain and symptom management at the end of life, and may also include efforts to increase the quality of services delivered to chronic pain patients and the chronically ill for whom pain may be a significant symptom.

SEC. 104. PAIN COVERAGE QUALITY EVALUATION AND INFORMATION.

(a) IN GENERAL.—Section 1851(d)(4) of the Social Security Act (42 U.S.C. 42 U.S.C. 1395w–21(d)(4)) is amended—

(1) in subparagraph (A), by adding at the end the following:

''(ix) The organization's coverage of pain and symptom management.''; and

(2) in subparagraph (D)—

(A) in clause (iii), by striking ''and'' at the end;

(B) in clause (iv), by striking the period and inserting '', and''; and

(C) by adding at the end the following:

''(v) not later than 2 years after the date of enactment of this clause, an evaluation (which may be made part of any other relevant report of quality evaluation that the plan is required to prepare) for the plan (updated annually) that indicates the performance of the plan with respect to access to, and quality of, pain and symptom management, including such management as part of end of life care. Data shall be posted in a comparable manner for consumer use on www.medicare.gov.''.

(b) EFFECTIVE DATE.—The amendments made by paragraph (1) apply to information provided with respect to annual, coordinated election periods (as defined in section 1851(e)(3)(B) of the Social Security Act (42 U.S.C. 1395–21(e)(3)(B)) beginning after the date of enactment of this Act.

SEC. 105. SURGEON GENERAL'S REPORT.

Not later than October 1, 2006, the Surgeon General shall prepare and submit to the appropriate committees of Congress and the public, a report concerning the state of pain and symptom management in the United States. The report shall include—

(1) a description of the legal and regulatory barriers that may exist at the Federal and State levels to providing adequate pain and symptom management;

(2) an evaluation of provider competency in providing pain and symptom management;

(3) an identification of vulnerable populations, including children, advanced elderly, non-English speakers, and minorities, who may be likely to be underserved or may face barriers to access to pain management and recommendations to improve access to pain management for these populations;

(4) an identification of barriers that may exist in providing pain and symptom management in health care settings, including assisted living facilities;

(5) an identification of patient and family attitudes that may exist which pose barriers

in accessing pain and symptom management or in the proper use of pain medications;

(6) an evaluation of medical, nursing, and pharmacy school training and residency training for pain and symptom management;

(7) a review of continuing medical education programs in pain and symptom management; and

(8) a description of the use of and access to mental health services for patients in pain and patients at the end of life.

TITLE II—DEVELOPING COMMUNITY RESOURCES

SEC. 201. FAMILY SUPPORT NETWORKS IN PAIN AND SYMPTOM MANAGEMENT.

(a) ESTABLISHMENT.—The Secretary, acting through the Public Health Service, shall award grants for the establishment of 6 National Family Support Networks in Pain and Symptom Management (in this section referred to as the ''Networks'') to serve as national models for improving the access and quality of pain and symptom management to chronic pain patients (including chronically ill patients for whom pain is a significant symptom) and those individuals in need of pain and symptom management at the end of life and to provide assistance to family members and caregivers.

(b) ELIGIBILITY AND DISTRIBUTION.—

(1) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

(A) be an academic facility or other entity that has demonstrated an effective approach to training health care providers including mental health professionals concerning pain and symptom management and palliative care services; and

(B) prepare and submit to the Secretary an application (to be peer reviewed by a committee established by the Secretary), at such time, in such manner, and containing such information as the Secretary may require.

(2) DISTRIBUTION.—In providing for the establishment of Networks under subsection (a), the Secretary shall ensure that—

(A) the geographic distribution of such Networks reflects a balance between rural and urban needs; and

(B) at least 3 Networks are established at academic facilities.

(c) ACTIVITIES OF NETWORKS.—A Network that is established under this section—

(1) shall provide for an integrated interdisciplinary approach, that includes psychological and counseling services, to the delivery of pain and symptom management;

(2) shall provide community leadership in establishing and expanding public access to appropriate pain care, including pain care at the end of life;

(3) shall provide assistance, through caregiver supportive services, that include counseling and education services;

(4) shall develop a research agenda to promote effective pain and symptom management for the broad spectrum of patients in need of access to such care that can be implemented by the Network;

(5) shall provide for coordination and linkages between clinical services in academic centers and surrounding communities to assist in the widespread dissemination of provider and patient information concerning how to access options for pain management;

(6) shall establish telemedicine links to provide education and for the delivery of services in pain and symptom management;

(7) shall develop effective means of providing assistance to providers and families for the management of a patient's pain 24 hours a day, 7 days a week; and

(8) may include complimentary medicine provided in conjunction with traditional medical services.

(d) PROVIDER PAIN AND SYMPTOM MANAGEMENT COMMUNICATIONS PROJECTS.—

(1) IN GENERAL.—Each Network shall establish a process to provide health care personnel with information 24 hours a day, 7 days a week, concerning pain and symptom management. Such process shall be designed to test the effectiveness of specific forms of communications with health care personnel so that such personnel may obtain information to ensure that all appropriate patients are provided with pain and symptom management.

(2) TERMINATION.—The requirement of paragraph (1) shall terminate with respect to a Network on the day that is 2 years after the date on which the Network has established the communications method.

(3) EVALUATION.—Not later than 60 days after the expiration of the 2-year period referred to in paragraph (2), a Network shall conduct an evaluation and prepare and submit to the Secretary a report concerning the costs of operation and whether the form of communication can be shown to have had a positive impact on the care of patients in chronic pain or on patients with pain at the end of life.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as limiting a Network from developing other ways in which to provide support to families and providers, 24 hours a day, 7 days a week.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $18,000,000 for fiscal years 2005 through 2007.

TITLE III—REIMBURSEMENT BARRIERS

SEC. 301. REIMBURSEMENT BARRIERS REPORT.

The Medicare Payment Advisory Commission (MedPac) established under section 1805 of the Social Security Act (42 U.S.C. 1396b–6) shall conduct a study, and prepare and submit to the appropriate committees of Congress a report, concerning—

(1) the manner in which medicare policies may pose barriers in providing pain and symptom management and palliative care services in different settings, including a focus on payment for nursing home and home health services;

(2) the identification of any financial barriers that may exist within the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.) that interfere with continuity of care and interdisciplinary care or supportive care for the broad range of chronic pain patients (including patients who are chronically ill for whom pain is a significant symptom), and for those who are terminally ill, and include the recommendations of the Commission on ways to eliminate those barriers that the Commission may identify;

(3) the reimbursement barriers that exist, if any, in providing pain and symptom management through hospice care, particularly in rural areas, and if barriers exist, recommendations concerning adjustments that would assist in assuring patient access to pain and symptom management through hospice care in rural areas;

(4) whether the medicare reimbursement system provides incentives to providers to delay informing terminally ill patients of the availability of hospice and palliative care; and

(5) the impact of providing payments for medication therapy management services in pain and symptom management and palliative care services.

SEC. 302. INSURANCE COVERAGE OF PAIN AND SYMPTOM MANAGEMENT.

(a) IN GENERAL.—The General Accounting Office shall conduct a survey of public and private health insurance providers, including managed care entities, to determine whether the reimbursement policies of such insurers inhibit the access of chronic pain patients to pain and symptom management and pain and symptom management for those in need of end-of-life care (including patients who are chronically ill for whom pain is a significant symptom). The survey shall include a review of formularies for pain medication and the effect of such formularies on pain and symptom management.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall prepare and submit to the appropriate committees of Congress a report concerning the survey conducted under subsection (a).

TITLE IV—IMPROVING FEDERAL COORDINATION OF POLICY, RESEARCH, AND INFORMATION

SEC. 401. ADVISORY COMMITTEE ON PAIN AND SYMPTOM MANAGEMENT.

(a) ESTABLISHMENT.—The Secretary shall establish an advisory committee, to be known as the Advisory Committee on Pain and Symptom Management, to make recommendations to the Secretary concerning a coordinated Federal agenda on pain and symptom management.

(b) MEMBERSHIP.—The Advisory Committee established under subsection (a) shall be comprised of 11 individuals to be appointed by the Secretary, of which at least 1 member shall be a representative of—

(1) physicians (medical doctors or doctors of osteopathy) who treat chronic pain patients or the terminally ill;

(2) nurses who treat chronic pain patients or the terminally ill;

(3) pharmacists;

(4) hospice;

(5) pain researchers;

(6) patient advocates;

(7) caregivers; and

(8) mental health providers.

The members of the Committee shall designate 1 member to serve as the chairperson of the Committee.

(c) MEETINGS.—The Advisory Committee shall meet at the call of the chairperson of the Committee.

(d) AGENDA.—The agenda of the Advisory Committee established under subsection (a) shall include—

(1) the development of recommendations to create a coordinated Federal agenda on pain and symptom management;

(2) the development of proposals to ensure that pain is considered as the fifth vital sign for all patients;

(3) the identification of research needs in pain and symptom management, including gaps in pain and symptom management guidelines;

(4) the identification and dissemination of pain and symptom management practice guidelines, research information, and best practices;

(5) proposals for patient education concerning how to access pain and symptom management across health care settings;

(6) the manner in which to measure improvement in access to pain and symptom management and improvement in the delivery of care;

(7) the development of ongoing strategies to assure the aggressive use of pain medications, including opiods, regardless of health care setting; and

(8) the development of an ongoing mechanism to identify barriers or potential barriers to pain and symptom management created by Federal policies.

(e) RECOMMENDATION.—Not later than 2 years after the date of enactment of this Act, the Advisory Committee established under subsection (a) shall prepare and submit to the Secretary recommendations concerning a prioritization of the need for a

Federal agenda on pain and symptom management, and ways in which to better coordinate the activities of entities within the Department of Health and Human Services, and other Federal entities charged with the responsibility for the delivery of health care services or research on pain and symptom management with respect to pain management.

(f) CONSULTATION.—In carrying out this section, the Advisory Committee shall consult with all Federal agencies that are responsible for providing health care services or access to health services to determine the best means to ensure that all Federal activities are coordinated with respect to research and access to pain and symptom management.

(g) ADMINISTRATIVE SUPPORT; TERMS OF SERVICE; OTHER PROVISIONS.—The following shall apply with respect to the Advisory Committee:

(1) The Committee shall receive necessary and appropriate administrative support, including appropriate funding, from the Department of Health and Human Services.

(2) The Committee shall hold open meetings and meet not less than 4 times per year.

(3) Members of the Committee shall not receive additional compensation for their service. Such members may receive reimbursement for appropriate and additional expenses that are incurred through service on the Committee which would not have incurred had they not been a member of the Committee.

(4) The requirements of Appendix 2 of title 5, United States Code.

SEC. 402. INSTITUTES OF MEDICINE REPORT ON CONTROLLED SUBSTANCE REGULATION AND THE USE OF PAIN MEDICATIONS.

(a) IN GENERAL.—The Secretary, acting through a contract entered into with the Institute of Medicine, shall review findings that have been developed through research conducted concerning—

(1) the effects of controlled substance regulation on patient access to effective care;

(2) factors, if any, that may contribute to the underuse of pain medications, including opiods;

(3) the identification of State legal and regulatory barriers, if any, that may impact patient access to medications used for pain and symptom management; and

(4) strategies to assure the aggressive use of pain medications, including opiods, regardless of health care setting.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the findings described in subsection (a).

SEC. 403. CONFERENCE ON PAIN RESEARCH AND CARE.

Not later than December 31, 2007, the Secretary, acting through the National Institutes of Health, shall convene a national conference to discuss the translation of pain research into the delivery of health services including mental health services to chronic pain patients and those needing end-of-life care. The Secretary shall use unobligated amounts appropriated for the Department of Health and Human Services to carry out this section.

TITLE V—DEMONSTRATION PROJECTS

SEC. 501. PROVIDER PERFORMANCE STANDARDS FOR IMPROVEMENT IN PAIN AND SYMPTOM MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Health Resources Services Administration, shall award grants for the establishment of not less than 5 demonstration projects to determine effective methods to measure improvement in the skills, knowledge, and attitudes and beliefs of health care personnel in pain and symptom management as such skill, knowledge, and attitudes and beliefs apply to providing services to chronic pain patients and those patients requiring pain and symptom management at the end of life.

(b) EVALUATION.—Projects established under subsection (a) shall be evaluated to determine patient and caregiver knowledge and attitudes toward pain and symptom management.

(c) APPLICATION.—To be eligible to receive a grant under subsection (a), an entity shall prepare and submit to the Secretary an application at such time, in such manner and containing such information as the Secretary may require.

(d) TERMINATION.—A project established under subsection (a) shall terminate after the expiration of the 2-year period beginning on the date on which such project was established.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 502. END OF LIFE CARE DEMONSTRATION PROJECTS.

The Secretary, acting through the Health Resources and Services Administration, shall—

(1) not later than January 1, 2007, carry out not less than 5 demonstration and evaluation projects that implement care models for individuals at the end of life, at least one of which shall be developed to assist those individuals who are terminally ill and have no family or extended support, and each of which may be carried out in collaboration with domestic and international entities to gain and share knowledge and experience on end of life care;

(2) conduct 3 demonstration and evaluation activities concerning the education and training of clinicians in end of life care, and assist in the development and distribution of accurate educational materials on both pain and symptom management and end of life care;

(3) in awarding grants for the training of health professionals, give priority to awarding grants to entities that will provide training for health professionals in pain and symptom management and in end-of-life care at the undergraduate level;

(4) shall evaluate demonstration projects carried out under this section within the 5-year period beginning on the commencement of each such project; and

(5) develop a strategy and make recommendations to Congress to ensure that the United States health care system—

(A) has a meaningful, comprehensive, and effective approach to meet the needs of individuals and their caregivers as the patient approaches death; and

(B) integrates broader supportive services.

S. 1000

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Palliative Care Training Act''.

SEC. 2. PALLIATIVE CARE TRAINING PROGRAM.

(a) IN GENERAL.—Section 753 of the Public Health Service Act (42 U.S.C. 294c) is amended by adding at the end the following:

''(d) HOSPICE AND PALLIATIVE CARE ACADEMIC CAREER AWARDS.—

''(1) IN GENERAL.—The Secretary shall establish a program to provide Hospice and Palliative Care Academic Career Awards to eligible individuals under this subsection.

''(2) ELIGIBILITY.—To be eligible to receive an Award under this subsection, an individual shall—

''(A) be board certified or board eligible in internal medicine, family practice, or pediatrics and their subspecialties including geriatrics, palliative medicine, or other specialties as determined by the Secretary;

''(B) have completed an approved fellowship program or demonstrated specialized experience in palliative medicine as determined by the Secretary; and

''(C) have a junior faculty appointment at an accredited (as determined by the Secretary) school of medicine (allopathic or osteopathic) and within an internship or residency program that is approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association.

''(3) AMOUNT AND TERM.—

''(A) AMOUNT.—The amount of an Award to an individual under this subsection shall be equal to $75,000 for fiscal year 2006, adjusted for subsequent fiscal years to reflect the increase in the Consumer Price Index.

''(B) TERM.—The term of any Award made under this subsection shall not exceed 5 years.

''(4) SERVICE REQUIREMENT.—An individual who receives an Award under this subsection shall provide training in hospice care and palliative medicine, including the training of interdisciplinary teams of health care professionals. The provision of such training shall constitute at least 75 percent of the obligations of such individual under the terms of the Award.

''(5) EFFECTIVE DATE.—This subsection shall take effect 90 days after the date of enactment of the Palliative Care Training Act.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 757 of the Public Health Service Act (42 U.S.C. 294g) is amended—

(1) in subsection (a), by striking ''through 2002'' and inserting ''through 2010'';

(2) in subsection (b)(1)(C), by striking ''$22,631,000'' and inserting ''$55,779,000''; and

(3) in subsection (c), by adding at the end the following:

''(3) GERIATRIC EDUCATION AND TRAINING.—Of the amount made available under subsection (b)(1)(C) for fiscal year 2006, the Secretary may obligate for awards under subsections (a), (b), and (c) of section 753 an amount not less than $31,805,000.''.

S. 1001

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Hospice Demonstration Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Each year more than ⅓ of the people who die suffer from a chronic illness.

(2) Approximately ⅓ of Americans are unsure about whom to contact to get the best care during life's last stages.

(3) Americans want a team of professionals to care for the patient at the end of life.

(4) Americans want emotional and spiritual support for the patient and family.

(5) Ninety percent of Americans do not realize that hospice care is a benefit provided under the medicare program under title XVIII of the Social Security Act.

(6) Data of the Centers for Medicare & Medicaid Services show that beneficiaries were enrolled in hospice for an average of less than 7 weeks in 1998, far less than the full 6-month benefit under the medicare program.

(7) According to the most recent data available, although more medicare beneficiaries are enrolled in hospice, the medicare length of stay has declined.

(8) Use of hospice among medicare beneficiaries has been decreasing, from a high of 59 days in 1995 to less than 48 days in 1998.

SEC. 3. HOSPICE DEMONSTRATION PROJECTS AND HOSPICE EDUCATION GRANTS.

(a) DEFINITIONS.—In this section:

(1) DEMONSTRATION PROJECT.—The term ''demonstration project'' means a demonstration project established by the Secretary under subsection (b)(1).

(2) HOSPICE CARE.—The term ''hospice care'' means the items and services described in subparagraphs (A) through (I) of section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)) that are provided to a seriously ill medicare beneficiary under a demonstration project by a hospice program (or by others under an arrangement with such a program) under a written plan for providing such care to such beneficiary established and periodically reviewed by the beneficiary's attending physician, by the medical director of the program, and by the interdisciplinary group described in section 1861(dd)(2)(B) of such Act (42 U.S.C. 1395x(dd)(2)(B)).

(3) HOSPICE PROGRAM.—The term ''hospice program'' has the meaning given that term in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)).

(4) MEDICARE BENEFICIARY.—The term ''medicare beneficiary'' means any individual who is entitled to benefits under part A or enrolled under part B of the medicare program.

(5) MEDICARE PROGRAM.—The term ''medicare program'' means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(7) SERIOUSLY ILL.—The term ''seriously ill'' has the meaning given such term by the Secretary (in consultation with hospice programs and academic experts in end-of-life care), except that the Secretary may not limit such term to individuals who are terminally ill (as defined in section 1861(dd)(3)(A) of the Social Security Act (42 U.S.C. 1395x(dd)(3)(A))).

(b) HOSPICE DEMONSTRATION PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish demonstration projects in accordance with the provisions of this subsection to increase the utility of the hospice care for seriously ill medicare beneficiaries.

(2) PARTICIPATION.—

(A) HOSPICE PROGRAMS.—Except as provided in paragraph (4)(A), only a hospice program with an agreement under section 1866 of the Social Security Act (42 U.S.C. 1395cc), a consortium of such hospice programs, or a State hospice association may participate in the demonstration program.

(B) SERIOUSLY ILL MEDICARE BENEFICIARIES.—The Secretary shall permit any seriously ill medicare beneficiary residing in the service area of a hospice program participating in a demonstration project to participate in such project on a voluntary basis.

(3) SERVICES UNDER DEMONSTRATION PROJECTS.—The provisions of section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) shall apply to the payment for hospice care provided under the demonstration projects, except that—

(A) notwithstanding section 1862(a)(1)(C) of such Act (42 U.S.C. 1395y(a)(1)(C)), the Secretary shall provide for reimbursement for items and services provided under the supportive and comfort care benefit established under paragraph (3);

(B) any licensed nurse practitioner or physician assistant may admit a seriously ill medicare beneficiary as the primary care provider when necessary and within the scope of practice of such practitioner or assistant under State law;

(C) if an underserved community included in a demonstration project does not have a qualified social worker, any professional (other than a social worker) who has the necessary knowledge, skills, and ability to provide medical social services may provide such services;

(D) the Secretary shall waive any requirement that nursing facilities used for respite care have skilled nurses on the premises 24 hours per day;

(E) the Secretary shall permit respite care to be provided to the seriously ill medicare beneficiary at home; and

(F) the Secretary shall waive reimbursement regulations to provide—

(i) reimbursement for consultations and preadmission informational visits, even if the seriously ill medicare beneficiary does not elect hospice care at that time;

(ii) except with respect to the supportive and comfort care benefit under paragraph (3), a minimum payment for hospice care provided under the demonstration projects based on the provision of hospice care to a seriously ill medicare beneficiary for a period of 14 days, that—

(I) the Secretary shall pay to any hospice program participating in a demonstration project and providing such care (regardless of the length of stay of the seriously ill medicare beneficiary); and

(II) may not be less than the amount of payment that would have been made for hospice care if payment had been made at the daily rate of payment for such care under section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i));

(iii) an increase in the reimbursement rates for hospice care to offset—

(I) changes in hospice care and oversight under the demonstration projects;

(II) the higher costs of providing hospice care in rural areas due to lack of economies of scale or large geographic areas; and

(III) the higher costs of providing hospice care in urban underserved areas due to unique costs specifically associated with people living in those areas, including providing security;

(iv) direct payment of any nurse practitioner or physician assistant practicing within the scope of State law in relation to hospice care provided by such practitioner or assistant; and

(v) a per diem rate of payment for in-home care under subparagraph (E) that reflects the range of care needs of the seriously ill medicare beneficiary and that—

(I) in the case of a seriously ill medicare beneficiary that needs routine care, is not less than 150 percent, and not more than 200 percent, of the routine home care rate for hospice care; and

(II) in the case of a seriously ill medicare beneficiary that needs acute care, is equal to the continuous home care day rate for hospice care.

(4) SUPPORTIVE AND COMFORT CARE BENEFIT.—

(A) IN GENERAL.—For purposes of the demonstration projects, the Secretary shall establish a supportive and comfort care benefit for any eligible seriously ill medicare beneficiary (as defined in subparagraph (C)).

(B) PARTICIPATION.—Any individual or entity with an agreement under section 1866 of the Social Security Act (42 U.S.C. 1395cc) may furnish items or services covered under the supportive and comfort care benefit.

(C) BENEFIT.—Under the supportive and comfort care benefit, any eligible seriously ill medicare beneficiary may—

(i) continue to receive benefits for disease and symptom modifying treatment under the medicare program (and the Secretary may not require or prohibit any specific treatment or decision);

(ii) receive case management and hospice care through a hospice program participating in a demonstration project (for which payment shall be made under paragraph (2)(F)(ii)); and

(iii) receive information and education in order to better understand the utility of hospice care.

(D) PAYMENT.—The Secretary shall establish procedures under which the Secretary pays for items and services furnished to seriously ill medicare beneficiaries under the supportive and comfort care benefit on a fee-for-service basis.

(E) ELIGIBLE SERIOUSLY ILL MEDICARE BENEFICIARY DEFINED.—

(i) IN GENERAL.—In this paragraph, the term ''eligible seriously ill medicare beneficiary'' means any seriously ill medicare beneficiary that meets the criteria approved by the Secretary under clause (ii).

(ii) APPROVAL OF CRITERIA.—

(I) IN GENERAL.—With respect to each demonstration project, the Secretary shall approve criteria for determining whether a seriously ill medicare beneficiary is eligible for hospice care under a demonstration project that has been developed by hospice programs in consultation with researchers in end-of-life care and the broader medical community.

(II) DATA COMPARABILITY.—The Secretary may only approve criteria that ensures that each demonstration project yields comparable data with respect to eligible seriously ill medicare beneficiaries on—

(aa) the utilization of services by such beneficiaries;

(bb) the cost of providing services to such beneficiaries, including any costs associated with providing services before an individual is terminally ill (as defined in section 1861(dd)(3)(A) of the Social Security Act (42 U.S.C. 1395x(dd)(3)(A))); and

(cc) the effect of the demonstration project on the quality of care of such beneficiaries.

(III) LIMITATION.—The Secretary may not approve criteria if the purpose of such criteria is to segment services or to provide a benefit for the chronically ill.

(5) CONDUCT OF DEMONSTRATION PROJECTS.—

(A) SITES.—The Secretary shall conduct demonstration projects in at least 3, but not more than 6, sites (which may be statewide).

(B) SELECTION OF SITES.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary shall select demonstration sites on the basis of proposals submitted under subparagraph (C) that are located in geographic areas that—

(I) include both urban and rural hospice programs; and

(II) are geographically diverse and readily accessible to a significant number of seriously ill medicare beneficiaries.

(ii) EXCEPTIONS.—

(I) UNDERSERVED URBAN AREAS.—If a geographic area does not have any rural hospice program available to participate in a demonstration project, such area may substitute an underserved urban area, but the Secretary shall give priority to those proposals that include a rural hospice program.

(II) SPECIFIC SITE.—The Secretary shall select as a demonstration site the State in which (according to the Hospital Referral Region of Residence, 1994–1995, as listed in the Dartmouth Atlas of Health Care 1998) the largest metropolitan area of the State had the lowest percentage of medicare beneficiary deaths in a hospital when compared to the largest metropolitan area of each other State, and the percentage of enrollees who experienced intensive care during the last 6 months of life was 21.5 percent.

(C) PROPOSALS.—

(i) IN GENERAL.—The Secretary shall accept proposals by any State hospice association, hospice program, or consortium of hospice programs at such time, in such manner, and in such form as the Secretary may reasonably require.

(ii) RESEARCH DESIGNS.—The Secretary shall permit research designs that use time series, sequential implementation of the intervention, randomization by wait list, and other designs that allow the strongest possible implementation of the demonstration projects, while still allowing strong evaluation about the merits of the demonstration projects.

(D) FACILITATION OF EVALUATION.—The Secretary shall design the program to facilitate the evaluation conducted under paragraph (7).

(6) DURATION.—The Secretary shall complete the demonstration projects within a period of 6½ years that includes a period of 18 months during which the Secretary shall complete the evaluation under paragraph (7).

(7) EVALUATION.—During the 18-month period following the first 5 years of the demonstration projects, the Secretary shall complete an evaluation of the demonstration projects in order to determine—

(A) the short-term and long-term costs and benefits of changing hospice care provided under the medicare program to include the items, services, and reimbursement options provided under the demonstration projects;

(B) whether any increase in payments for the hospice care provided under the medicare program are offset by savings in other parts of the medicare program;

(C) the projected cost of implementing the demonstration projects on a national basis; and

(D) in consultation with hospice organizations and hospice programs (including organizations and providers that represent rural areas), whether a payment system based on diagnosis-related groups is useful for administering the hospice care provided under the medicare program.

(8) REPORTS TO CONGRESS.—

(A) PRELIMINARY REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a preliminary report on the progress made in the demonstration projects.

(B) INTERIM REPORT.—Not later than 30 months after the implementation of the demonstration projects, the Secretary, in consultation with participants in the projects, shall submit to the committees described in subparagraph (A) an interim report on the demonstration projects.

(C) FINAL REPORT.—Not later than the date on which the demonstration projects end, the Secretary shall submit a final report to the committees described in subparagraph (A) on the demonstration projects that includes the results of the evaluation conducted under paragraph (7) and recommendations for appropriate legislative changes.

(9) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of the medicare program to the extent and for the period the Secretary finds necessary to conduct the demonstration projects.

(10) SPECIAL RULES FOR PAYMENT OF MEDICARE ADVANTAGE ORGANIZATIONS.—The Secretary shall establish procedures under which the Secretary provides for an appropriate adjustment in the monthly payments made under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) to any Medicare Advantage organization offering a Medicare Advantage plan to reflect the participation of each seriously ill medicare beneficiary enrolled in such plan in a demonstration project.

(c) HOSPICE EDUCATION GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a Hospice Education Grant program under which the Secretary awards education grants to entities participating in the demonstration projects for the purpose of providing information about—

(A) the hospice care under the medicare program; and

(B) the benefits available to medicare beneficiaries under the demonstration projects.

(2) USE OF FUNDS.—Grants awarded under paragraph (1) shall be used—

(A) to provide—

(i) individual or group education to medicare beneficiaries and the families of such beneficiaries; and

(ii) individual or group education of the medical and mental health community caring for medicare beneficiaries; and

(B) to test strategies to improve the general public knowledge about hospice care under the medicare program and the benefits available to medicare beneficiaries under the demonstration projects.

(d) FUNDING.—

(1) HOSPICE DEMONSTRATION PROJECTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) such sums as may be necessary to carry out this section.

(B) SUPPORTIVE AND COMFORT CARE BENEFIT.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t), in such proportion as the Secretary determines is appropriate, such sums as may be necessary to provide for payment of the costs attributable to the supportive and comfort care benefit.

(2) HOSPICE EDUCATION GRANTS.—The Secretary shall expend such sums as may be necessary for the purposes of carrying out the Hospice Education Grant program established under subsection (c)(1) from the Research and Demonstration Budget of the Centers for Medicare & Medicaid Services.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 1002. A bill to amend title XVIII of the Social Security Act to make improvements in payments to hospitals under the medicare program, and for other purposes; to the Committee on Finance.

MR. GRASSLEY. Mr. President, physician-owned specialty hospitals continue to raise a number of troubling issues, and I feel strongly that additional action to address these issues is needed from Congress. Today, I am pleased to join Senator MAX BAUCUS, the ranking Democrat on the Senate Finance Committee, in introducing the Hospital Fair Competition Act of 2005. This bill has an effective date of June 8, 2005, regardless of when it may be enacted as this is the date the current moratorium on specialty hospitals expires.

Now, specialty hospitals have existed for quite some time. There are other types of hospitals with a special focus, such as children's hospitals and psychiatric facilities. But these are not really what we are talking about. We are talking about the emergence of a new type of hospital. These new facilities are mostly for-profit. They are mainly owned by the physicians who refer their patients to these hospitals. And, they provide treatment in very specific areas such as cardiac, orthopedic or surgical care.

The number of these specialty hospitals has more than tripled in the past 10 years. While they are still relatively small in number—about 100—they are increasing quickly. They are mainly located in certain pockets of the country, concentrated in those States without a ''certificate of need'' requirement. That means they are mainly located in States where hospitals are permitted to add beds or build new facilities without first obtaining approval by the State. This approval process helps ensure that there is an actual public health need for additional health resources in the community.

Congress, in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), placed a moratorium on the development of new physician-owned specialty hospital hospitals until June 8, 2005. First, there were concerns about the conflict of interest inherit in physician self-referral. Second, it was thought that specialty hospitals might be an unfair form of competition. And third, in all of this, was a concern about the impact these hospitals may be having on the health care system as a whole.

The Medicare Payment Advisory Commission (MedPAC) and the Centers for Medicare and Medicaid Services (CMS) were directed by the MMA to study and report on a number of issues related to specialty hospitals. Today's Hospital Fair Competition Act draws heavily from MedPAC's non-partisan recommendations in its March 8, 2005, report to Congress.

Three separate government studies have found that physician-owned specialty hospitals treat the most profitable patients and services, leaving community hospitals to treat a disproportionate share of less profitable cases, Medicaid cases and the uninsured.

An April 2003 report by the Government Accountability Office (GAO) found that patients at specialty hospitals tended to be less sick than patients with the same diagnoses at general hospitals. The Centers for Medicare and Medicaid Services (CMS) reported in March its preliminary findings that specialty hospitals generally treat less severe cases than community hospitals. And, MedPAC reported that physician-owned specialty hospitals treat patients who are less sick, and thus more profitable, and concentrate on certain diagnosis-related groups (DRGs) that are more profitable.

In addition, approximately 93 percent of community hospitals operate emergency rooms, compared to less than half of specialty hospitals, thus treating any and all patients who walk

through their doors. They also serve a much greater share of poor patients, averaging 15 percent versus four percent for specialty heart hospitals and one percent for specialty orthopedic hospitals. When community hospitals lose their profitable services, they must shift costs to private patients to make up the difference. This then means private employers may pay higher premiums—all so physician-owned specialty hospitals can profit.

Specialty hospitals are able to take advantage of an outdated payment system. The current inpatient payment rates have not been recalibrated in over 20 years. This has resulted in certain patients and certain case types being significantly more profitable to treat than others. In fact, specialty heart hospitals have been found by MedPAC to treat Medicare patients who are 13 percent more profitable than the average mix of patients. And at specialty surgical hospitals this number is 14 percent.

This bill would make corrections to the payment system so that certain cases and patients are not significantly more profitable or less profitable to treat than others. While we believe the secretary has the authority to make these payment changes, this bill will direct CMS to do so beginning in 2007. This will improve payment accuracy for all hospitals, and will better reflect the actual cost of delivering care.

But Medicare payment changes are not enough.

I also have great concerns about the inherent conflict of interest in physician ownership. This interest in gaming the system may not be in the best interest of the patient, and this is troubling. Physicians are paid by Medicare to treat the patient. In addition, because they are owners of the hospital, physician owners get a payment from Medicare for use of the facility. And, because they are also investors in the hospital, these physician owners also get dividends on their investment. MedPAC found these annual dividends for older facilities are frequently in excess of 20 percent.

I am concerned that this focus on profit may unduly influence physician decision-making on the part of some physicians. This is not good for unsuspecting patients, the Medicare program or taxpayers. Some physicians may choose where to send a patient based on whether or not they think that patient will profit their hospital. In addition, changes to the payment system don't prevent some physician-owners from selecting patients based on their insurance. Specialty hospitals would likely continue to treat few—if any—poor or uninsured patients.

MedPAC has found that specialty hospital hospitals treat far fewer Medicaid recipients than community hospitals in the same market—75 percent fewer for specialty heart hospitals, and 94 percent fewer for specialty orthopedic hospitals. In addition, CMS found that specialty hospitals provided only about 40 percent of the share of uncompensated care that the local community hospitals provided. We now have 45 million uninsured Americans in our country, and I continue to be very concerned about their health care.

Congress has passed laws that, with very few exceptions, prevent physician physicians from referring Medicare and Medicaid patients to facilities in which they are owners. This was adopted in response to a number of studies that found that physician-owners tended to make more referrals to their facilities and order substantially more services at higher cost.

One exception, however, is the ''whole hospital'' exception. The law allows physicians to invest in a ''whole hospital'' because it is believed that no particular referral would economically advantage a specific physician owner. Because the referrals would be diluted across multiple services, there would not be a direct link to any one physician's income. But specialty hospitals are not really whole hospitals. In fact, they are more like a hospital department such as a cardiac unit or an orthopedic unit. Under current law, we believe that the secretary has the authority to define what constitutes a whole hospital, and we encourage CMS to determine whether specialty hospitals meet this definition. The law clearly states that it is illegal for physicians to invest in hospital departments.

This loophole in the law, the ''whole hospital'' exception, is being exploited. The Hospital Fair Competition Act will close this loophole. New specialty hospitals will not qualify for the ''whole hospital'' exception as of June 8, 2005—the date the moratorium expires.

Existing specialty hospitals, those in operation or under development before November 18, 2003, will be able to continue operating under certain restrictions. These ''grandfathered'' specialty hospitals will be prohibited from increasing their total number of physician owners. Also, the bill caps each individual physician's investment and the aggregate physician investment in the facility as of June 8, 2005. Grandfathered specialty hospitals will not be allowed to expand their scope of services. And finally, they will be prohibited from increasing their number of beds or operating rooms. I believe that halting the growth in physician ownership at existing specialty hospitals is the only way to prevent the inherent conflict of interest associated with self-referral, and ensure that patients' interests are not compromised.

Now, I have heard from a number of physician-owners on this issue and they have said to me that they invest in these hospitals because it allows them to have greater control over their workplace. It gives them a say in operations, and more control over the quality and cost of patient care. I believe that certain coordinated care incentive arrangements have the potential to assist physicians in doing just that.

So this bill would provide an opportunity to better align physician and hospital financial incentives. It would allow physicians to share in hospital savings achieved by re-engineering clinical care in the hospitals. These well-designed and approved arrangements might include agreed-upon use of certain medical devices or implants for certain type of surgeries. Or perhaps they would include improving operating room efficiency and scheduling. Or they might include the adoption of clinical protocols or evidence-based medicine to standardize certain aspects of the practice of medicine.

While these arrangements have the potential to improve patient care while reducing hospital costs, I want to make sure the patient—the Medicare beneficiary—is protected. So, this bill would require the secretary to develop safeguards and monitor these coordinated care arrangements to make sure that physicians are not profiting for increased referrals or for reducing quality care.

In summary, The Hospital Fair Competition Act would:

Improve the accuracy of Medicare inpatient payments by directing the secretary to level the playing field by using estimated costs rather than charges in setting the DRG weights; calculating DRG weights at the hospital level before aggregating them to a national level; adjusting the DRG weights to account for high cost outlier payments, and ensuring that the DRGs appropriately capture differences in the severity of illness of patients.

Allow existing specialty hospitals to continue operation under certain restrictions, especially regarding physician investment.

Close the ''whole hospital'' loophole by prohibiting new specialty hospitals from having ownership or investment interest from physicians who refer Medicare or Medicaid patients to the hospital, effective June 8, 2005.

Allow physicians and hospitals to enter into certain coordinated care arrangements where physicians could share in savings experienced by a hospital by implementing certain cost-reduction efforts.

Establish safeguards to ensure that coordinated care arrangements protect quality of care and minimize any impact on physician referrals.

I urge all my colleagues to join Senator BAUCUS and me in support of this very important bill.

Mr. BAUCUS. Mr. President, I rise today to join Chairman GRASSLEY in introducing the Hospital Fair Competition Act of 2005.

This bill, based primarily on recommendations of the Medicare Payment Advisory Commission (MedPAC), will improve the accuracy of Medicare's inpatient hospital prospective payment system (PPS); prevent the establishment of new specialty hospitals to which physician-owners can self-

refer, while allowing existing physician-owned specialty hospitals to continue with restrictions; and allow ''gainsharing'' arrangements to foster improved physician-hospital efficiency. This legislation is important for patients, taxpayers, and the Medicare program, and I urge my colleagues to support it.

About 17 months ago, Congress passed the Medicare Modernization Act—the MMA. This 400-page bill included many important provisions, including long-awaited outpatient drug benefits under Medicare.

The MMA also included a small provision—Section 507—related to the construction of physician-owned specialty hospitals. These facilities specialize in cardiac, orthopedic or general surgical care, and are partly- or wholly-owned by physicians. The provision was a response to growing concerns over physician self-referral, and placed a moratorium on the construction of new, physician-owned specialty hospitals, while ''grandfathering'' existing facilities and those in development.

Having reviewed several independent analyses on this issue, I believe Congress was right to place a moratorium on specialty hospital construction. And I also believe that moratorium should effectively be extended permanently, while allowing existing facilities to continue operating in their current capacity.

Some view specialty hospitals as innovative, focused factories for high-quality, specialized care. Advocates for these facilities say that by focusing on a limited number of services, specialty hospitals provide excellent care at a good price, while adding competition to the health care marketplace.

Others say specialty hospitals flourish because they exploit a Medicare loophole allowing physician-owners to select patients who are healthier and, therefore, more profitable.

For my part, I don't want to stand in the way of innovation or competition. For example, I'm glad that Congress brought innovation to Medicare in the form of outpatient drug benefits. That was long overdue.

And hospitals and physicians should work together in innovative ways to improve efficiency in health care. The U.S. spends twice as much—or more—per-person on health care compared to any other developed country. And yet, our health outcomes are worse than theirs. We should get a better bang for our health-care buck, and we can take steps to that end by encouraging quality and accountability in health care.

That's why I am pushing to advance incentives for quality improvement in Medicare, so patients—and taxpayers—get the most for their money. I introduced legislation last year to require that Medicare pay dialysis providers and Medicare managed care plans based on the quality of care they provide. And I am working on legislation to extend these principles of paying for quality to other parts of Medicare.

As for competition, I'm all for it—as long as it's carried out on a level playing field. But when it comes to physician ownership of specialty hospitals, I'm not convinced the playing field is level. That's because physicians alone choose where patients go on the playing field—either to community hospitals or specialty hospitals. Some liken physician-owners of specialty hospitals to coaches who choose the starting lineup for both teams—in this case, the specialty hospital team and the community hospital team.

And for the third time, a Federal agency has told us that the healthiest teams, that is, the most profitable patients, end up at physician-owned specialty hospitals.

In 2003, the non-partisan Government Accountability Office (GAO) reported that, by and large, specialty hospitals care for relatively healthier patients than their community hospital counterparts. GAO surveyed 25 specialty hospitals, and found that 21 of the 25 had a less acute mix patients than community hospitals. GAO determined that of the hospitals studied, 17 percent cardiac patients seen by specialty hospitals could be classified as severe cases, compared with 22 percent in general hospitals. And about 5 percent of orthopedic cases in specialty hospitals were severe, compared with 8 percent in community hospitals.

Earlier this year, on March 8, MedPAC issued its MMA-mandated report on specialty hospitals, and arrived at findings similar to those of the GAO. MedPAC found that despite shorter lengths of stay, physician-owned specialty hospitals are not more cost efficient than community hospitals. MedPAC found that specialty hospitals tend to treat lower shares of Medicaid patients than community hospitals. And, just as GAO did, MedPAC found that specialty hospitals treat patients who are generally less sick—and therefore, more profitable—compared to community hospitals.

And while the Department of Health and Human Services has not officially issued its MMA-mandated report on the topic—but is expected to shortly—HHS reported on March 8 that, based on the small number of facilities it studied, specialty hospitals tend to care for a healthier patient population than their community hospital counterparts.

I believe the phenomenon of specialty hospitals treating healthier patients is the result of a loophole in the Stark self-referral law. This loophole—related to the ''whole hospital exception''—is one that should be closed. If it is not closed, Congress will effectively sanction the practice of physician self-referral that has been prohibited for years.

In 1989, the HHS Inspector General reported that patients of referring physicians who owned or invested in independent clinical labs received 45% more lab services than Medicare patients in general.

In 1992, a study found that physical therapy visits per patient were 39% to 45% higher in facilities with physician ownership compared to those without. In short, the authors of the study found that utilization and charges per-patient were higher when facilities were owned by physicians with an ownership interest.

In response to these studies and others like them, Congress passed the Stark laws, to prevent physician self-referral, first in the area of clinical labs, and subsequently in 10 other areas, including physical therapy and certain imaging procedures.

But the Stark laws did not address the issue of physician self-referral to specialty hospitals. In part, that's because there weren't many specialty hospitals at the time. As the GAO pointed out in its 2003 report, the vast majority of specialty hospitals were built in 1992 or later.

Instead, the Stark law included a provision that has come to be known as the ''whole hospital exception.'' While the Stark law prohibits physicians with ownership interest in only a hospital department from referring patients to that department, the law does allow physicians to refer to a facility they partially own, under two conditions. First, the physician must have admitting privileges in that hospital. Second, the physician must have a financial interest in the ''whole hospital,'' not just a department of the hospital.

As the GAO explained in 2003:

''The premise [of the whole hospital exception] is that any referral or decision made by a physician who has a stake in an entire hospital would produce little personal economic gain because hospitals tend to provide a diverse and large group of services. However, the Stark law does prohibit physicians who have ownership interest only in a hospital subdivision from referring patients to that subdivision. With respect to specialty hospitals, the concern exists that, as these hospitals are usually much smaller in size and scope than general hospitals and closer in size to hospital departments, the exception to Stark could allow physician owners to influence their hospitals'—and therefore their own financial gain through practice patterns and referrals.''

The problem with the ''whole hospital'' loophole is that it treats a 10-bed surgical facility the same as a 500–bed community hospital, even though that 10-bed facility more resembles a department of the 500–bed hospital than it does the hospital itself. This loophole is unfair, and our bill closes it, by preventing the establishment of new specialty hospitals to which physician-owners can self-refer.

Let me note that our bill does nothing to prevent the construction of new specialty hospitals—as long as self-referral is not part of the business model. Hospitals specializing in one type of care or another have existed in this country for years, and should be encouraged—as long as their owners and referrers are not one and the same.

Opponents of this bill will likely make at least three claims. First, they

will state that preventing the construction of new, physician-owned specialty hospitals is anticompetitive. Second, they will suggest that since the average physician-owner's share in a specialty hospital is small, economic incentives to self-refer are minimal. Third, they will claim the bill thwarts health care quality. Let me take these claims in turn.

As I stated previously, I am all for competition—as long as it's fair. But I don't think it's fair to further a system in which physician-owners can send healthier and more profitable patients to facilities they own, while sending sicker, less-profitable ones to hospitals they don't own. There's a reason Congress acted to mitigate the effects of physician self referral over 15 years ago, and I see no reason why that principle should not be extended to the specialty hospital setting.

On the issue of economic incentives, some argue that physician self-referral to specialty hospitals is a non-issue, since physicians typically own a very small share of a particular facility. In fact, MedPAC found that in about one-third of specialty hospitals they surveyed, the largest share owned by a single physician was just two percent. And as a group, physicians own just over a third of the typical heart hospital. But MedPAC also pointed out that about one-third of orthopedic and surgical hospitals were owned almost entirely by their physicians. Perhaps more important, MedPAC showed that even a relatively small ownership interest can reap large profits for an individual physician investor. Page 21 of MedPAC's March report on specialty hospitals says:

What is the order of magnitude of physicians financial incentives to increase utilization when they own a hospital? What follows is a hypothetical example of the marginal profit associated with a group of cardiologists each referring just one additional patient (above the current patient load) for coronary artery bypass graft (CABG) surgery. In fiscal year 2002, the base payment for CABG surgery with cardiac catheterization (DRG 107) was roughly $24,000. Our examination of Medicare cost reports and hospital financial statements suggests that variable costs equal approximately 60 percent of the DRG payment, roughly $14,400. Hence the marginal profit—payments minus variable cost—would be $9,600 per patient ($24,000–$14,400). If 10 cardiologists owned a 3 percent interest each and they all induced one additional surgery per year, each cardiologist's income would increase by $2,880 ($9,600 3% 10).''

In other words, even a small ownership share—just three percent—can provide a strong profit motive—and a strong incentive toward self-referral.

Finally, let me address the third claim that will likely be made against this bill—that it thwarts the provision of quality care. Specialty hospital advocates claim that due to the focused nature of their mission, physician-owned specialty hospitals provide better quality and outcomes than their community hospital counterparts. But recently the New England Journal of Medicine published a study showing that patients undergoing certain heart procedures in specialty hospitals were less likely to have coexisting conditions than those being treated at general hospitals. The authors of the study stated, ''. . . given that we found no significant differences in outcomes between specialty and general hospitals with similar volumes or between specialty cardiac hospitals and specialized general hospitals, it could be argued that the specialty-hospital model itself does not yield better outcomes.'' They also said, ''. . . our study provides no definitive evidence that cardiac specialty hospitals provide better or more efficient care than general hospitals with similar procedural volumes.''

In short, there is solid evidence that despite being less efficient, physician-owned specialty hospitals care for healthier, more-profitable patients, leaving community hospitals to care for sicker, less-profitable ones. Economic incentives toward physician self-referral in specialty hospitals are significant. And there is slim evidence that specialty hospitals provide better care than community hospitals.

Given this evidence, it's clear that Congress should not facilitate the construction of more physician-owned specialty hospitals. And while we support ''grandfathering'' existing facilities, let me make clear that we do not intend to create another grandfathering period if the legislation is not enacted before June 8, 2005. The intent of this bill, even if it passes after June 8, is to effectively make permanent the MMA-mandated moratorium.

But this bill does more than simply prevent the establishment of new, physician-owned specialty hospitals. It also takes steps to mitigate ill incentives in the inpatient PPS, by making the PPS more accurate for all providers of hospital care—community hospitals and 'grandfathered' specialty hospitals alike.

Medicare spends about $100 billion per year on inpatient hospital services, and it's important that this system be accurate. Accordingly, MedPAC recommended a number of steps to improve the accuracy of the Medicare inpatient payment system. These recommendations should mitigate incentives for all hospitals to choose healthy patients over sick ones, and to focus on some diagnoses at the expense of others.

Medicare pays hospitals for inpatient services based on roughly 500 Diagnosis Related Groups (DRGs), which bundle services needed to treat a patient with a particular disease. DRGs cover most routine operating costs attributable to patient care, including routine nursing services, room and board, and diagnostic and ancillary services. Under current law, just over five percent of the base payment for all DRGs is set aside for inpatient outlier payments, even though some DRGs have almost no outlier cases. The Hospital Fair Competition Act directs the Secretary to adjust the DRG relative weights to account for differences in the prevalence of high-cost outlier cases, thereby removing their disproportionate impact on the payment system.

The bill also improves accuracy of the DRG weights. Currently DRG weights are based on the national average of hospital charges for a particular DRG. The rate of growth for these charges may vary dramatically, depending on the service. For example, MedPAC has found that hospital markups for ancillary services (e.g., supplies, operating room time) tend to be higher than those of routine services (e.g., room and board, nursing care). As these ancillary and routine charges grow at different rates, the DRGs reflect that growth, gradually skewing the system away from the true costs of providing care. In short, a charge-based system causes Medicare to pay too much for some services, not enough for others. The Hospital Fair Competition Act directs the Secretary to substitute the charge-based system with one based on hospitals' costs, as well as base the DRG weights on the national average of hospitals' relative values in each DRG.

Mind you, we believe that the Secretary currently has the authority to make the payment changes outlined above. The Hospital Fair Competition Act simply directs the Secretary to do so. We also believe the Secretary has the authority to promulgate regulations defining what a ''whole hospital'' is. When Congress passed the ''whole hospital exception'', it did not intend to allow self-referral to facilities that are effectively the equivalent of a hospital wing or department. We believe the Secretary can and should exercise his authority to close the ''whole hospital'' loophole by regulation.

Mr. President, some say that the proliferation of physician-owned specialty hospitals is a function of physicians' desire for control over their workplace. They argue that physicians typically have no say in day-to-day hospital operations, and thus little incentive to improve the quality or efficiency of the care they provide in the hospital. MedPAC's recommendations for ''gainsharing'' stand to alleviate some of that concern, by giving physicians more control over their workplace.

Gainsharing arrangements allow physicians and hospitals to improve hospital efficiency without the undesirable effects of physician self-referral. In a gainsharing arrangement, hospitals and physicians share cost-savings gained by means such as streamlining the purchase of medical devices, substituting less-costly items used in surgical procedures, and maximizing operating room efficiency. While gainsharing arrangements must be developed carefully so as not to compromise quality of patient care, gain sharing has the potential to align physician-hospital incentives so that care

can be delivered in the most cost-effective manner.

I realize that gainsharing arrangements are not a panacea toward improving physician-hospital relations. We can and should do more to give providers of all types a better stake in improving their workplace and the quality of care they provide. That's why I am pushing initiatives to tie Medicare payment to quality, so that—unlike the current system—the best providers are not paid the same rates as mediocre ones. This system of paying for quality stands to improve accountability across the spectrum of Medicare provider types, and give both patients and the government more for their money.

We all know that Medicare's long-term fiscal future is much in doubt. Hardly a day passes without a warning about Medicare's finances and the retirement of the Baby Boom generation that will complicate the long-term financial picture of the program.

Given these warnings, it's imperative that we make the most of the resources at hand, and—where possible—make Medicare a better more responsible buyer of health care. By leveling the playing field regarding patient referrals; improving the accuracy of Medicare's inpatient hospital payments; and giving physicians a larger stake in their hospital workplaces, this bill stands to do that.

Chairman GRASSLEY and I believe these changes will go a long way toward improving much of what ails hospital payment under Medicare, and we urge our colleagues' support for this important legislation.

By Mr. McCAIN:

S. 1003. A bill to amend the Act of December 22, 1974, and for other purposes; to the Committee on Indian Affairs.

Mr. McCAIN. Mr. President, today I am introducing legislation to amend the Navajo-Hopi Land Settlement Act of 1974 in order to bring the relocation process to an orderly conclusion. I look forward to working with all affected parties on this bill and will work with them to ensure it takes into account their views. This bill will phase out the Navajo-Hopi relocation program by September 30, 2008, and at that time transfer all remaining responsibilities to the Secretary of the Interior. It provides a time certain for eligible Navajo and Hopi individuals to apply for and receive relocation benefits and after that time the Federal Government will no longer be obligated to provide replacement homes for those individuals. Under this legislation, the funds that would have been used to provide replacement homes to such individuals will be held in trust by the Secretary for distribution to the individual or their heirs.

The Navajo-Hopi Land Settlement Act of 1974 was enacted to resolve longstanding disputes that have divided the Navajo and Hopi Indian Tribes for over a century. The origins of this dispute can be traced directly to the creation of the 1882 reservation for the Hopi Tribe and the subsequent creation of the 1934 Navajo Reservation. At the time these reservations were established, Navajo families lived within the lands set aside for the Hopi Tribe and Hopi families lived within lands set aside for the Navajo Nation and tensions between the two tribes continued to heighten. In 1958 Congress, in an effort to resolve this dispute, passed legislation that authorized the tribes to file suit in Federal court to quiet title the 1882 reservation and to their respective claims and rights. That legislation gave rise to over 35 years of continuous litigation between the tribes in an effort to resolve their respective rights and claims to the land.

In 1974, Congress enacted the Navajo-Hopi Land Settlement Act which established Navajo and Hopi negotiating teams under the auspices of a Federal mediator to negotiate a settlement to the 1882 reservation land dispute. The act also authorized the tribes to file suit in Federal court to quiet title the 1934 reservation and to file claims for damages arising out of the dispute against each other or the United States. The act also established a three member Navajo-Hopi Indian Relocation Commission to oversee the relocation of members of the Navajo Nation who were living on lands partitioned to the Hopi Tribe and members of the Hopi Tribe who were living on lands partitioned to the Navajo Nation. Since its establishment, the relocation program has been an extremely difficult and contentious process.

When this program was first established, the estimated cost of providing relocation benefits to approximately 6,000 Navajos estimated eligible for relocation was roughly $40 million. These figures woefully underestimated the number of families impacted by relocation and the tremendous delays that have plagued this program. By 1996, the United States had expended over $350 million to relocate more than 11,000 Navajo and Hopi tribal members. At that time, there remained over 640 eligible families who had never received relocation benefits and an additional 50 to 100 families who had never applied for relocation benefits. There were also over 130 eligibility appeals pending. Without question, the funding for this settlement has far exceeded the original cost estimates by more than 1000 percent. Since 1975, Congress has appropriated over $440 million for this program.

At its inception, the relocation program was intended to be a temporary program that was established to fulfill a specific mission and we cannot continue to fund it with no end in sight. Moreover, I am convinced that our current Federal budgetary pressures require us to ensure that the Navajo-Hopi relocation housing program is brought to an orderly and certain conclusion. It is for that reason that I am introducing the Navajo-Hopi Land Settlement Act Amendments of 2005. This legislation will phase out the Navajo-Hopi Indian relocation program by September 30, 2008, and transfer the remaining responsibilities under the act to the Secretary of the Interior. Under the bill, the relocation commissioner shall transfer to the Secretary such funds as are necessary to construct replacement homes for any eligible head of household who has left the Hopi partitioned land but who has not received a replacement home by September 30, 2008. These funds will be held in trust by the Secretary of the Interior for distribution to such individual or their heirs. In addition, the bill includes provisions establishing an expedited procedure for handling appeals of final eligibility determinations.

This bill is similar to the legislation I introduced during the 104th Congress. S. 1111 proposed to phase out the relocation program by September 2001. A hearing was held on that bill and comments were received from the affected parties. At that time, many of the witnesses stated that with limited exception, the program could come to a resolution under the time line proposed in S. 1111. Opposition to passing the legislation was based in part on the incomplete process of approval of the accommodation lease agreements between the Hopi Tribe and individual Navajos who were still living on the Hopi partitioned lands. That action has since occurred and the Commission has had eight additional years to conclude its responsibilities. Therefore, it is now time for the Congress to act to bring the long and difficult process of relocation to an orderly conclusion.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 1003

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Navajo-Hopi Land Settlement Amendments of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE NAVAJO-HOPI LAND SETTLEMENT ACT OF 1974

Sec. 101. Repeal of sections.
Sec. 102. Definitions; division of land.
Sec. 103. Joint ownership of minerals.
Sec. 104. Actions.
Sec. 105. Paiute Indian allotments.
Sec. 106. Partitioned and other designated land.
Sec. 107. Resettlement land for Navajo Tribe.
Sec. 108. Office of Navajo and Hopi Indian Relocation.
Sec. 109. Report.
Sec. 110. Relocation of households and members.
Sec. 111. Relocation housing.
Sec. 112. Payment for use of land.
Sec. 113. Effect of Act.

Sec. 114. Actions for accounting, fair value of grazing, and claims for damages to land.
Sec. 115. Joint use.
Sec. 116. Religious ceremonies; piping of water.
Sec. 117. Access to religious shrines.
Sec. 118. Exclusion of payments from certain Federal determinations of income.
Sec. 119. Authorization of exchange.
Sec. 120. Severability.
Sec. 121. Authorization of appropriations.
Sec. 122. Funding and construction of high school and medical center.
Sec. 123. Environmental impact; wilderness study; cancellation of leases and permits.
Sec. 124. Attorney fees and court costs.
Sec. 125. Lobbying.
Sec. 126. Navajo Rehabilitation Trust Fund.
Sec. 127. Availability of funds for relocation assistance.

TITLE II—PERSONNEL OF THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Sec. 201. Retention preference.
Sec. 202. Separation pay.
Sec. 203. Federal retirement.

TITLE III—TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS

Sec. 301. Definitions.
Sec. 302. Transfer of functions.
Sec. 303. Transfer and allocations of appropriations.
Sec. 304. Effect of title.

TITLE I—AMENDMENTS TO THE ACT OF DECEMBER 22, 1974

SEC. 101. REPEAL OF SECTIONS.

(a) IN GENERAL.—The Act of December 22, 1974 (25 U.S.C. 640d et seq.) is amended in the first undesignated section by striking ''That, (a) within'' and all that follows through the end of the section.

(b) ADDITIONAL REPEALS.—Sections 2 through 5 and sections 26 and 30 of the Act of December 22, 1974 (25 U.S.C. 640d–1 through 640d–4; 88 Stat. 1723; 25 U.S.C. 640d–28) are repealed.

SEC. 102. DEFINITIONS; DIVISION OF LAND.

Section 6 of the Act of December 22, 1974 (25 U.S.C. 640d–5) is amended—

(1) by striking ''SEC. 6. The Mediator'' and all that follows through subsection (f) and inserting the following:

''SECTION 1. DEFINITIONS.

''In this Act:

''(1) DISTRICT COURT.—The term 'District Court' means the United States District Court for the District of Arizona.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(3) TRIBE.—The term 'Tribe' means—

''(A) the Navajo Indian Tribe; and

''(B) the Hopi Indian Tribe.

''SEC. 2. DIVISION OF LAND.

''(a) DIVISION.—

''(1) IN GENERAL.—The land located within the boundaries of the reservation established by Executive order on December 16, 1982, shall be divided into parcels of equal acreage and quality—

''(A) to the maximum extent practicable; and

''(B) in accordance with the final order issued by the District Court on August 30, 1978 (providing for the partition of the surface rights and interest of the Tribes).

''(2) VALUATION OF PARCELS.—For the purpose of calculating the value of a parcel produced by a division under paragraph (1), the Secretary shall—

''(A) take into account any improvement on the land; and

''(B) consider the grazing capacity of the land to be fully restored.

''(3) COMPENSATION BY TRIBES.—If the partition under paragraph (1) results in parcels of unequal value, as determined by the Secretary, the Tribe that receives the more valuable parcel shall pay to the other Tribe compensation in an amount equal to the difference in the values of the parcels, as determined by the Secretary.

''(4) COMPENSATION BY FEDERAL GOVERNMENT.—If the District Court determines that the failure of the Federal Government to fulfill an obligation of the Government decreased the value of a parcel under paragraph (1), the Government shall pay to the recipient of the parcel compensation in an amount equal to the difference between—

''(A) the decreased value of the parcel; and

''(B) the value of the fully restored parcel.'';

(2) by striking ''(g) Any'' and inserting the following:

''(b) LICENSE FEES AND RENTS.—Any''; and

(3) by striking ''(h) Any'' and inserting the following:

''(c) GRAZING AND AGRICULTURAL USE.—Any''.

SEC. 103. JOINT OWNERSHIP OF MINERALS.

Section 7 of the Act of December 22, 1974 (25 U.S.C. 640d–6) is amended—

(1) by striking ''SEC. 7. Partition'' and inserting the following:

''SEC. 3. JOINT OWNERSHIP OF MINERALS.

''(a) IN GENERAL.—Partition''; and

(2) in the second sentence, by striking ''All'' and inserting the following:

''(b) JOINT MANAGEMENT.—All''.

SEC. 104. ACTIONS.

Section 8 of the Act of December 22, 1974 (25 U.S.C. 640d–7) is amended—

(1) by striking ''SEC. 8. (a) Either Tribe'' and inserting the following:

''SEC. 4. ACTIONS.

''(a) ACTIONS IN DISTRICT COURT.—Either Tribe'';

(2) in subsection (b)—

(A) in the first sentence, by striking ''(b) Lands, if any,'' and inserting the following:

''(b) ALLOCATION OF LAND.—

''(1) NAVAJO RESERVATION.—Any land'';

(B) in the second sentence, by striking ''Lands, if any,'' and inserting the following:

''(2) HOPI RESERVATION.—Any land''; and

(C) in the third sentence, by striking ''Any lands'' and inserting the following:

''(3) JOINT AND UNDIVIDED INTERESTS.—Any land'';

(3) in subsection (c)—

(A) by striking ''(c)(1) Either'' and inserting the following:

''(c) EXCHANGE OF LAND.—

''(1) IN GENERAL.—Either'';

(B) in paragraph (2), by striking ''(2) In the event'' and inserting the following:

''(2) INTERESTS OF TRIBES.—If'';

(C) in paragraph (3), by striking ''(3) Neither'' and inserting the following:

''(3) DEFENSE.—Neither''; and

(D) by striking ''section 18'' each place it appears and inserting ''section 14'';

(4) in subsection (d), by striking ''(d) Nothing'' and inserting the following:

''(d) EFFECT OF SECTION.—Nothing'';

(5) in subsection (e), by striking ''(e) The'' and inserting the following:

''(e) PAYMENT OF LEGAL FEES, COURT COSTS, AND OTHER EXPENSES.—The''; and

(6) by striking subsection (f).

SEC. 105. PAIUTE INDIAN ALLOTMENTS.

Section 9 of the Act of December 22, 1974 (25 U.S.C. 640d–8) is amended by striking ''SEC. 9. Notwithstanding'' and inserting the following:

''SEC. 5. PAIUTE INDIAN ALLOTMENTS.

''Notwithstanding''.

SEC. 106. PARTITIONED AND OTHER DESIGNATED LAND.

Section 10 of the Act of December 22, 1974 (25 U.S.C. 640d–9) is amended—

(1) by striking ''SEC. 10. (a) Subject'' and inserting the following:

''SEC. 6. PARTITIONED AND OTHER DESIGNATED LAND.

''(a) NAVAJO TRUST LAND.—Subject'';

(2) in subsection (a), by striking ''section 9 and subsection (a) of section 17'' and inserting ''sections 5 and 13(a)'';

(3) in subsection (b)—

(A) by striking ''(b) Subject'' and inserting the following:

''(b) HOPI TRUST LAND.—Subject'';

(B) by striking ''section 9 and subsection (a) of section 17'' and inserting ''sections 5 and 13(a)'';

(C) by striking ''section 3 or 4'' and inserting ''section 1''; and

(D) by striking ''section 8'' and inserting ''section 4'';

(4) in subsection (c)—

(A) by striking ''(c) The'' and inserting the following:

''(c) PROTECTION OF RIGHTS AND PROPERTY.—The''; and

(B) by striking ''pursuant thereto'' and all that follows through the end of the subsection and inserting ''pursuant to this Act'';

(5) in subsection (d), by striking ''(d) With'' and inserting the following:

''(d) PROTECTION OF BENEFITS AND SERVICES.—With''; and

(6) in subsection (e)—

(A) by striking ''(e)(1) Lands'' and inserting the following:

''(e) TRIBAL JURISDICTION OVER PARTITIONED LAND.—

''(1) IN GENERAL.—Land'';

(B) by adjusting the margins of subparagraphs (A) and (B) of paragraph (1) appropriately; and

(C) in the matter following subparagraph (B)—

(i) by striking ''The provisions'' and inserting the following:

''(2) RESPONSIBILITY OF SECRETARY.—The provisions''; and

(ii) by striking ''life tenants and''.

SEC. 107. RESETTLEMENT LAND FOR NAVAJO TRIBE.

(a) IN GENERAL.—Section 11(a) of the Act of December 22, 1974 (25 U.S.C. 640d–10(a)) is amended—

(1) by striking ''SEC. 11. (a) The Secretary'' and inserting the following:

''SEC. 7. RESETTLEMENT LAND FOR NAVAJO TRIBE.

''(a) TRANSFER OF LAND.—

''(1) IN GENERAL.—The Secretary'';

(2) by striking ''(1) transfer not to exceed two hundred and fifty thousand acres of lands'' and inserting the following:

''(A) transfer not more than 250,000 acres of land'';

(3) by striking ''Tribe: *Provided*, That'' and all that follows through ''as possible.'' and inserting ''Tribe; and'';

(4) in the first paragraph designated as paragraph (2)—

(A) by striking ''(2) on behalf'' and inserting the following:

''(B) on behalf''; and

(B) by striking the second sentence;

(5) in the matter following paragraph (1)(B) (as redesignated by paragraph (4))—

(A) in the first sentence—

(i) by striking ''Subject to'' and all that follows through ''all rights'' and inserting the following:

''(4) REQUIREMENTS OF TRANSFER.—

''(A) IN GENERAL.—Subject to this paragraph, all rights''; and

(ii) by striking ''paragraph (1)'' and inserting ''paragraph (1)(A)'';

(B) in the second sentence, by striking ''So long as'' and inserting the following:

''(B) COAL LEASE APPLICATIONS.—

''(i) IN GENERAL.—If'';

(C) in the third sentence, by striking ''If such adjudication'' and inserting the following:

''(ii) ISSUANCE OF LEASES.—If an adjudication under clause (i)'';

(D) in the fourth sentence, by striking ''The leaseholders rights and interests'' and inserting the following:

''(iii) RIGHTS AND INTERESTS OF LEASEHOLDERS.—The rights and interests of a holder of a lease described in clause (i)''; and

(E) in the fifth sentence, by striking ''If any'' and inserting the following:

''(C) CLAIMS UNDER MINING LAW.—If any'';

(6) by inserting after paragraph (1)(B) (as redesignated by paragraph (4)) the following:

''(2) EXCHANGE OF LAND.—

''(A) IN GENERAL.—In order to facilitate a transfer of land under paragraph (1)(A), the Secretary may exchange land described in paragraph (1)(A) for State or private land of equal value.

''(B) UNEQUAL VALUE.—If the State or private land described in subparagraph (A) is of unequal value to the land described in paragraph (1)(A), the recipient of the land that is of greater value shall pay to the other party to the exchange under subparagraph (A) compensation in an amount not to exceed the lesser of—

''(i) the difference between the values of the land exchanged; or

''(ii) the amount that is 25 percent of the total value of the land transferred from the Secretary to the Navajo Tribe.

''(C) RESPONSIBILITY OF SECRETARY.—The Secretary shall ensure that the amount of a payment under subparagraph (B) is as minimal as practicable.

''(3) TITLE TO LAND ACCEPTED.—The Secretary shall accept title to land under paragraph (1)(B) on behalf of the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo reservation.''; and

(7) in the second paragraph designated as paragraph (2)—

(A) in the first sentence—

(i) by striking ''(2) Those'' and inserting the following:

''(5) STATE RIGHTS.—

''(A) IN GENERAL.—The''; and

(ii) by striking ''subsection 2 of this section'' and inserting ''paragraph (1)(B)''; and

(B) in the second sentence, by striking ''The'' and inserting the following:

''(B) STATE INTERESTS.—The''.

(b) PROXIMITY OF LAND; EXCHANGES OF LAND.—Section 11(b) of the Act of December 22, 1974 (25 U.S.C. 640d–10(b)) is amended by striking ''(b) A border'' and inserting the following:

''(b) PROXIMITY OF LAND TO BE TRANSFERRED OR ACQUIRED.—A border''.

(c) SELECTION OF LAND.—Section 11(c) of the Act of December 22, 1974 (25 U.S.C. 640d–10(c)) is amended—

(1) by striking ''(c) Lands'' and inserting the following:

''(c) SELECTION OF LAND TO BE TRANSFERRED OR ACQUIRED.—Land''; and

(2) by striking the period at the end and inserting the following: '': *Provided further*, That the authority of the Commissioner to select lands under this subsection shall terminate on September 30, 2008.''.

(d) REPORTS.—Section 11(d) of the Act of December 22, 1974 (25 U.S.C. 640d–10(d)) is amended by striking ''(d) The'' and inserting the following:

''(d) REPORTS.—The''.

(e) PAYMENTS.—Section 11(e) of the Act of December 22, 1974 (25 U.S.C. 640d–10(e)) is amended by striking ''(e) Payments'' and inserting the following:

''(e) PAYMENTS.—Payments''.

(f) ACQUISITION OF TITLE TO SURFACE AND SUBSURFACE INTERESTS.—Section 11(f) of the Act of December 22, 1974 (25 U.S.C. 640d–10(f)) is amended—

(1) by striking ''(f)(1) For'' and inserting the following:

''(f) ACQUISITION OF TITLE TO SURFACE AND SUBSURFACE INTERESTS.—

''(1) IN GENERAL.—For'';

(2) in paragraph (2), by striking ''(2) If'' and inserting the following:

''(2) PUBLIC NOTICE; REPORT.—If''; and

(3) in paragraph (3), by striking ''(3) In any case where'' and inserting the following:

''(3) RIGHTS OF SUBSURFACE OWNERS.—If''.

(g) LAND NOT AVAILABLE FOR TRANSFER.—Section 11(g) of the Act of December 22, 1974 (25 U.S.C. 640d–10(g)) is amended by striking ''(g) No'' and inserting the following:

''(g) LAND NOT AVAILABLE FOR TRANSFER.—No''.

(h) ADMINISTRATION OF LAND TRANSFERRED OR ACQUIRED.—Section 11(h) of the Act of December 22, 1974 (25 U.S.C. 640d–10(h)) is amended—

(1) by striking ''(h) The lands'' and inserting the following:

''(h) ADMINISTRATION OF LAND TRANSFERRED OR ACQUIRED.—

''(1) IN GENERAL.—The land''; and

(2) by adding at the end the following:

''(2) RELOCATION.—

''(A) IN GENERAL.—In order to facilitate relocation of a member of a Tribe, the Commissioner may grant a homesite lease on land acquired under this section to a member of the extended family of a Navajo Indian who is certified as eligible to receive benefits under this Act.

''(B) EXCEPTION.—The Commissioner may not use any funds available to the Commissioner to carry out this Act to provide housing to an extended family member described in subparagraph (A).''.

(i) NEGOTIATIONS REGARDING LAND EXCHANGES AND LEASES.—Section 11(i) of the Act of December 22, 1974 (25 U.S.C. 640d–10(i)) is amended—

(1) by striking ''(i) The'' and inserting the following:

''(i) NEGOTIATIONS REGARDING LAND EXCHANGES AND LEASES.—The''; and

(2) by striking ''section 23'' and inserting ''section 19''.

SEC. 108. OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION.

Section 12 of the Act of December 22, 1974 (25 U.S.C. 640d–11) is amended—

(1) by striking ''SEC. 12. (a) There is hereby'' and inserting the following:

''SEC. 8. OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION.

''(a) ESTABLISHMENT.—There is'';

(2) in subsection (b), by striking ''(b) The'' and inserting the following:

''(b) APPOINTMENT.—The'';

(3) in subsection (c)—

(A) by striking ''(c)(1)(A) Except'' and inserting the following:

''(c) CONTINUATION OF POWERS.—

''(1) POWERS AND DUTIES OF COMMISSIONER; EXISTING FUNDS.—

''(A) POWERS AND DUTIES OF COMMISSIONER.—Except'';

(B) in paragraph (1)(B), by striking ''(B) All'' and inserting the following:

''(B) EXISTING FUNDS.—All''; and

(C) in paragraph (2), by striking ''(2) There are hereby'' and inserting the following:

''(2) TRANSFER OF POWERS.—There are'';

(4) in subsection (d)—

(A) by striking ''(d)(1) Subject'' and inserting the following:

''(d) POWERS OF COMMISSIONER.—

''(1) IN GENERAL.—Subject'';

(B) by adjusting the margins of subparagraphs (A) and (B) of paragraph (1) appropriately;

(C) in paragraph (2), by striking ''(2) The'' and inserting the following:

''(2) CONTRACTS.—The''; and

(D) in paragraph (3), by striking ''(3) There'' and inserting the following:

''(3) AUTHORIZATION OF APPROPRIATIONS.—There'';

(5) in subsection (e)—

(A) by striking ''(e)(1)'' and inserting the following:

''(e) ADMINISTRATION.—

''(1) ADMINISTRATIVE, FISCAL, AND HOUSEKEEPING SERVICES.—

(B) in paragraph (1)—

(i) in the first sentence, by striking ''The'' and inserting the following:

''(A) IN GENERAL.—The''; and

(ii) in the second sentence, by striking ''In any'' and inserting the following:

''(B) ASSISTANCE FROM DEPARTMENTS AND AGENCIES.—In any''; and

(C) in paragraph (2), by striking ''(2) On'' and inserting the following:

''(2) FAILURE TO PROVIDE ASSISTANCE.—On'';

(6) by striking subsection (f) and inserting the following:

''(f) TERMINATION.—

''(1) IN GENERAL.—The Office of Navajo and Hopi Indian Relocation shall terminate on September 30, 2008.

''(2) TRANSFER OF OFFICE DUTIES.—On the date of termination of the Office, any duty of the Office that has not been carried out, as determined in accordance with this Act, shall be transferred to the Secretary in accordance with title III of the Navajo-Hopi Land Settlement Amendments of 2005.''; and

(7) by adding at the end the following:

''(g) OFFICE OF RELOCATION.—

''(1) ESTABLISHMENT.—Effective on October 1, 2006, there is established in the Department of the Interior an Office of Relocation.

''(2) DUTIES.—The Secretary, acting through the Office of Relocation, shall carry out the duties of the Office of Navajo and Hopi Indian Relocation that are transferred to the Secretary in accordance with title III of the Navajo-Hopi Land Settlement Amendments of 2005.

''(3) TERMINATION.—The Office of Relocation shall terminate on the date on which the Secretary determines that the duties of the Office have been carried out.''.

SEC. 109. REPORT.

Section 13 of the Act of December 22, 1974 (25 U.S.C. 640d–12) is amended—

(1) by striking ''SEC. 13. (a) By no'' and inserting the following:

''SEC. 9. REPORT.

''(a) IN GENERAL.—Not''; and

(2) in subsection (b)—

(A) by striking ''(b) The'' and inserting the following:

''(b) INCLUSIONS.—The''; and

(B) by striking ''contain, among other matters, the following:'' and inserting ''include—''.

SEC. 110. RELOCATION OF HOUSEHOLDS AND MEMBERS.

Section 14 of the Act of December 22, 1974 (25 U.S.C. 640d–13) is amended—

(1) by striking ''SEC. 14. (a)'' and inserting the following:

''SEC. 10. RELOCATION OF HOUSEHOLDS AND MEMBERS.

''(a) AUTHORIZATION.—'';

(2) in subsection (a)—

(A) in the first sentence—

(i) by striking ''Consistent'' and inserting the following:

''(1) IN GENERAL.—Consistent'';

(ii) by striking ''section 8'' each place it appears and inserting ''section 4''; and

(iii) by striking ''section 3 or 4'' and inserting ''section 1'';

(B) by striking the second sentence;

(C) in the third sentence, by striking ''No further'' and inserting the following:

''(2) SETTLEMENTS OF NAVAJO.—No further'';

(D) in the fourth sentence, by striking ''No further'' and inserting the following:

''(3) SETTLEMENTS OF HOPI.—No further''; and

(E) in the fifth sentence, by striking ''No individual'' and inserting the following:

''(4) GRAZING.—No individual'';

(3) in subsection (b)—

(A) by striking ''(b) In addition'' and inserting the following:

''(b) ADDITIONAL PAYMENTS TO HEADS OF HOUSEHOLDS—In addition'';

(B) by striking ''section 15'' and inserting ''section 11''; and

(C) by striking ''section 13'' and inserting ''section 9'';

(4) in subsection (c), by striking ''(c) No'' and inserting the following:

''(c) PAYMENTS FOR PERSONS MOVING AFTER A CERTAIN DATE.—No''; and

(5) by adding at the end the following:

''(d) PROHIBITION.—No payment for benefits under this Act may be made to any head of a household if, as of September 30, 2005, that head of household has not been certified as eligible to receive the payment.''.

SEC. 111. RELOCATION HOUSING.

Section 15 of the Act of December 22, 1974 (25 U.S.C. 640d–14) is amended—

(1) by striking ''SEC. 15. (a)'' and inserting the following:

''SEC. 11. RELOCATION HOUSING.

''(a) PURCHASE OF HABITATION AND IMPROVEMENTS.—'';

(2) in subsection (a)—

(A) in the first sentence, by striking ''The Commission'' and inserting the following:

''(1) IN GENERAL.—The Commission''; and

(B) in the second sentence—

(i) by striking ''The purchase'' and inserting the following:

''(2) PURCHASE PRICE.—The purchase''; and

(ii) by striking ''as determined under clause (2) of subsection (b) of section 13'';

(3) in subsection (b)—

(A) by striking ''(b) In addition'' and inserting the following:

''(b) REIMBURSEMENT FOR MOVING EXPENSES AND PAYMENT FOR REPLACEMENT DWELLING.—In addition'';

(B) by striking ''shall:'' and inserting ''shall—''; and

(C) in paragraph (1), by inserting ''and'' after the semicolon at the end;

(4) in subsection (c)—

(A) by striking ''(c) In implementing'' and inserting the following:

''(c) STANDARDS; CERTAIN PAYMENTS.—

''(1) STANDARDS.—In carrying out''; and

(B) in the second sentence—

(i) by striking ''No payment'' and inserting the following:

''(2) CERTAIN PAYMENTS.—No payment'';

(ii) by striking ''section 8'' and inserting ''section 4''; and

(iii) by striking ''section 3 or 4'' and inserting ''section 1'';

(5) in subsection (d)—

(A) by striking ''(d) The'' and inserting the following:

''(d) METHODS OF PAYMENT.—The'';

(B) by striking ''(1) Should'' and inserting the following:

''(1) HOME OWNERSHIP OPPORTUNITY PROJECTS.—Should'';

(C) by striking ''(2) Should'' and inserting the following:

''(2) PURCHASED AND CONSTRUCTED DWELLINGS.—Should''; and

(D) by striking ''(3) Should'' and inserting the following:

''(3) FAILURE TO ARRANGE RELOCATION.—Should'';

(6) in subsection (e)—

(A) by striking ''(e) The'' and inserting the following:

''(e) DISPOSAL OF ACQUIRED DWELLINGS AND IMPROVEMENTS.—The'';

(B) by striking ''section 8'' and inserting ''section 4''; and

(C) by striking ''section 3 or 4'' and inserting ''section 1'';

(7) in subsection (f), by striking ''(f) Notwithstanding'' and inserting the following:

''(f) PREFERENTIAL TREATMENT.—Notwithstanding''; and

(8) by striking subsection (g) and inserting the following:

''(g) BENEFITS HELD IN TRUST.—

''(1) IN GENERAL.—Not later than September 30, 2008, the Commissioner shall notify the Secretary of the identity of any head of household that, as of that date—

''(A) is certified as eligible to receive benefits under this Act;

''(B) does not reside on land that has been partitioned to the Tribe of which the head of household is a member; and

''(C) has not received a replacement home.

''(2) TRANSFER OF FUNDS.—Not later than September 30, 2008, the Commissioner shall transfer to the Secretary any funds not used by the Commissioner to make payments under this Act to eligible heads of households.

''(3) DISPOSITION OF TRANSFERRED FUNDS.—

''(A) IN GENERAL.—The Secretary shall hold any funds transferred under paragraph (2) in trust for the heads of households described in paragraph (1)(A).

''(B) PAYMENT AMOUNTS.—Of the funds held in trust under subparagraph (A), the Secretary shall make payments to heads of households described in paragraph (1)(A) in amounts that would have been made to the heads of households under this Act before September 30, 2008—

''(i) on receipt of a request of a head of household, to be used for a replacement home; or

''(ii) on the date of death of the head of household, if the head of household does not make a request under clause (i), in accordance with subparagraph (C).

''(C) DISTRIBUTION OF FUNDS ON DEATH OF HEAD OF HOUSEHOLD.—If the Secretary holds funds in trust under this paragraph for a head of household described in paragraph (1)(A) on the death of the head of household, the Secretary shall—

''(i) identify and notify any heir of the head of household; and

''(ii) distribute the funds held by the Secretary for the head of household to any heir—

''(I) immediately, if the heir is at least 18 years old; or

''(II) if the heir is younger than 18 years old on the date on which the Secretary identified the heir, on the date on which the heir attains the age of 18.

''(h) NOTIFICATION.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Navajo-Hopi Land Settlement Amendments of 2005, the Commissioner shall notify each eligible head of household who has not entered into a lease with the Hopi Tribe to reside on land partitioned to the Hopi Tribe, in accordance with section 700.138 of title 25, Code of Federal Regulations (or a successor regulation).

''(2) LIST.—On the date on which a notice period referred to in section 700.139 of title 25, Code of Federal Regulations (or a successor regulation), expires, the Commissioner shall submit to the Secretary and the United States Attorney for the District of Arizona a list containing the name and address of each eligible head of household who—

''(A) continues to reside on land that has not been partitioned to the Tribe of the head of household; and

''(B) has not entered into a lease to reside on that land.

''(3) CONSTRUCTION OF REPLACEMENT HOMES.—Before July 1, 2008, but not later than 90 days after receiving a notice of the imminent removal of a relocatee from land provided to the Hopi Tribe under this Act from the Secretary or the United States Attorney for the District of Arizona, the Commissioner may begin construction of a replacement home on any land acquired under section 6.

''(i) APPEALS.—

''(1) IN GENERAL.—The Commissioner shall establish an expedited hearing procedure for any appeal relating to the denial of eligibility for benefits under this Act (including regulations promulgated pursuant to this Act) that is pending on, or filed after, the date of enactment of Navajo-Hopi Land Settlement Amendments of 2005.

''(2) FINAL DETERMINATIONS.—The hearing procedure established under paragraph (1) shall—

''(A) provide for a hearing before an impartial third party, as the Commissioner determines necessary: and

''(B) ensure that a final determination is made by the Office of Navajo and Hopi Indian Relocation for each appeal described in paragraph (1) by not later than January 1, 2008.

''(3) NOTICE.—

''(A) IN GENERAL.—Not later than 30 days after the date of enactment of the Navajo-Hopi Land Settlement Amendments of 2005, the Commissioner shall provide written notice to any individual that the Commissioner determines may have the right to a determination of eligibility for benefits under this Act.

''(B) REQUIREMENTS FOR NOTICE.—The notice provided under subparagraph (A) shall—

''(i) specify that a request for a determination of eligibility for benefits under this Act shall be presented to the Commission not later than 180 days after the date on which the notice is issued; and

''(ii) be provided—

''(I) by mail (including means other than certified mail) to the last known address of the recipient; and

''(II) in a newspaper of general circulation in the geographic area in which an address referred to in subclause (I) is located.

''(j) PROCUREMENT OF SERVICES.—

''(1) IN GENERAL.—Notwithstanding any other provision of this Act, to ensure the full and fair evaluation of the requests referred to in subsection (i)(3)(A) (including an appeal hearing before an impartial third party referred to in subsection (i)(2)(A)), the Commissioner may enter into such contracts or agreements to procure such services, and employ such personnel (including attorneys), as the Commissioner determines to be necessary.

''(2) DETAIL OF ADMINISTRATIVE LAW JUDGES OR HEARING OFFICERS.—The Commissioner may request the Secretary to act through the Director of the Office of Hearings and Appeals to make available to the Office of Navajo and Hopi Indian Relocation an administrative law judge or other hearing officer with appropriate qualifications to review the requests referred to in subsection (i)(3)(A), as determined by the Commissioner.

''(k) APPEAL TO UNITED STATES CIRCUIT COURT OF APPEALS.—

''(1) IN GENERAL.—Subject to paragraph (3), any individual who, under the procedures established by the Commissioner pursuant to this section, is determined not to be eligible to receive benefits under this Act may appeal that determination to the United States Circuit Court of Appeals for the Ninth Circuit (referred to in this subsection as the 'Circuit Court').

''(2) REVIEW.—

''(A) IN GENERAL.—The Circuit Court shall, with respect to each appeal described in paragraph (1)—

''(i) review the entire record (as certified to the Circuit Court under paragraph (3)) on which a determination of the ineligibility of the appellant to receive benefits under this Act was based; and

''(ii) on the basis of that review, affirm or reverse that determination.

''(B) STANDARD OF REVIEW.—The Circuit Court shall affirm any determination that the Circuit Court determines to be supported by substantial evidence.

''(3) NOTICE OF APPEAL.—

''(A) IN GENERAL.—Not later than 30 days after a determination of ineligibility under paragraph (1), an affected individual shall file a notice of appeal with—

''(i) the Circuit Court; and

''(ii) the Commissioner.

''(B) CERTIFICATION OF RECORD.—On receipt of a notice under subparagraph (A)(ii), the Commissioner shall submit to the Circuit Court the certified record on which the determination that is the subject of the appeal was made.

''(C) REVIEW PERIOD.— Not later than 60 days after receiving a certified record under subparagraph (B), the Circuit Court shall conduct a review and file a decision regarding an appeal in accordance with paragraph (2).

''(D) BINDING DECISION.—A decision made by the Circuit Court under this subsection shall be final and binding on all parties.''.

SEC. 112. PAYMENT FOR USE OF LAND.

Section 16 of the Act of December 22, 1974 (25 U.S.C. 640d–15) is amended—

(1) by striking ''SEC. 16. (a) The Navajo'' and inserting the following:

''SEC. 12. PAYMENT FOR USE OF LAND.

''(a) IN GENERAL.—The Navajo'';

(2) in subsection (a), by striking ''sections 8 and 3 or 4'' and inserting ''sections 1 and 4''; and

(3) in subsection (b)—

(A) by striking ''(b) The'' and inserting the following:

''(b) PAYMENT.—The''; and

(B) by striking ''sections 8 and 3 or 4'' and inserting ''sections 1 and 4''.

SEC. 113. EFFECT OF ACT.

Section 17 of the Act of December 22, 1974 (25 U.S.C. 640d–16) is amended—

(1) by striking ''SEC. 17. (a)'' and inserting the following:

''SEC. 13. EFFECT OF ACT.

''(a) TITLE, POSSESSION, AND ENJOYMENT.—'';

(2) in subsection (a)—

(A) in the first sentence, by striking ''Nothing'' and inserting the following:

''(1) IN GENERAL.—Nothing''; and

(B) in the second sentence, by striking ''Such'' and inserting the following:

''(2) RESIDENCE ON OTHER RESERVATIONS.—Any''; and

(3) in subsection (b), by striking ''(b) Nothing'' and inserting the following:

''(b) FEDERAL EMPLOYEES.—Nothing''.

SEC. 114. ACTIONS FOR ACCOUNTING, FAIR VALUE OF GRAZING, AND CLAIMS FOR DAMAGES TO LAND.

Section 18 of the Act of December 22, 1974 (25 U.S.C. 640d–17) is amended—

(1) by striking ''SEC. 18. (a) Either'' and inserting the following:

''SEC. 14. ACTIONS FOR ACCOUNTING, FAIR VALUE OF GRAZING, AND CLAIMS FOR DAMAGES TO LAND.

''(a) ACTIONS BY TRIBES.—Either'';

(2) in subsection (a), by striking ''section 3 or 4'' and inserting ''section 1'';

(3) in subsection (b)—

(A) by striking ''(b) Neither'' and inserting the following:

''(b) DEFENSES.—Neither''; and

(B) by striking ''section 3 or 4'' and inserting ''section 1'';

(4) in subsection (c)—

(A) by striking ''(c) Either'' and inserting the following:

''(c) FURTHER ORIGINAL, ANCILLARY, OR SUPPLEMENTARY ACTS TO ENSURE QUIET ENJOYMENT.—

''(1) IN GENERAL.—Either''; and

(B) in the second sentence, by striking ''Such actions'' and inserting the following:

''(2) ACTION THROUGH CHAIRMAN.—An action under paragraph (1)'';

(5) in subsection (d)—

(A) by striking ''(d) Except'' and inserting the following:

''(d) UNITED STATES AS PARTY; JUDGMENTS AGAINST THE UNITED STATES—

''(1) IN GENERAL.—Except''; and

(B) in the second sentence, by striking ''Any judgment or judgments'' and inserting the following:

''(2) EFFECT OF JUDGMENTS.—Any judgment''; and

(6) in subsection (e), by striking ''(e) All'' and inserting the following:

''(e) REMEDIES.—All''.

SEC. 115. JOINT USE.

Section 19 of the Act of December 22, 1974 (25 U.S.C. 640d–18) is amended—

(1) by striking ''SEC. 19. (a) Notwithstanding'' and inserting the following:

''SEC. 15. JOINT USE.

''(a) REDUCTION OF LIVESTOCK.—

''(1) IN GENERAL.—Notwithstanding'';

(2) in subsection (a)(1) (as designated by paragraph (1))—

(A) by striking ''section 3 or 4'' and inserting ''section 1''; and

(B) in the second sentence, by striking ''The Secretary is directed to'' and inserting the following:

''(2) CONSERVATION PRACTICES AND METHODS.—The Secretary shall'';

(3) in subsection (b)—

(A) by striking ''(b) The'' and inserting the following:

''(b) SURVEY LOCATION OF MONUMENTS AND FENCING OF BOUNDARIES.—The''; and

(B) by striking ''sections 8 and 3 or 4'' each place it appears and inserting ''sections 1 and 4''; and

(4) in subsection (c)—

(A) by striking ''(c)(1) Surveying'' and inserting the following:

''(c) SURVEYING, MONUMENTING, AND FENCING; LIVESTOCK REDUCTION PROGRAM.—

''(1) SURVEYING, MONUMENTING, AND FENCING.—Surveying'';

(B) in paragraph (1)—

(i) by striking ''section 4'' and inserting ''section 1''; and

(ii) by striking ''section 8'' and inserting ''section 4''; and

(C) in paragraph (2), by striking ''(2) The'' and inserting the following:

''(2) LIVESTOCK REDUCTION PROGRAM.—The''.

SEC. 116. RELIGIOUS CEREMONIES; PIPING OF WATER.

Section 20 of the Act of December 22, 1974 (25 U.S.C. 640d–19) is amended by striking ''SEC. 20. The members'' and inserting the following:

''SEC. 16. RELIGIOUS CEREMONIAL USES; PIPING OF WATER.

The members''.

SEC. 117. ACCESS TO RELIGIOUS SHRINES.

Section 21 of the Act of December 22, 1974 (25 U.S.C. 640d–20) is amended by striking ''SEC. 21. Notwithstanding'' and inserting the following:

''SEC. 17. ACCESS TO RELIGIOUS SHRINES.

Notwithstanding''.

SEC. 118. EXCLUSION OF PAYMENTS FROM CERTAIN FEDERAL DETERMINATIONS OF INCOME.

Section 22 of the Act of December 22, 1974 (25 U.S.C. 640d–21) is amended—

(1) by striking ''SEC. 22. The availability'' and inserting the following:

''SEC. 18. EXCLUSION OF PAYMENTS FROM CERTAIN FEDERAL DETERMINATIONS OF INCOME.

''(a) IN GENERAL.—The availability''; and

(2) by striking ''None of the funds'' and inserting the following:

''(b) FEDERAL AND STATE INCOME TAXES.—None of the funds''.

SEC. 119. AUTHORIZATION OF EXCHANGE.

Section 23 of the Act of December 22, 1974 (25 U.S.C. 649d–22) is amended—

(1) by striking ''SEC. 23. The Navajo'' and inserting the following:

''SEC. 19. AUTHORIZATION OF EXCHANGE.

''(a) IN GENERAL.—The Navajo''; and

(2) in the second sentence—

(A) by striking ''In the event that the Tribes should'' and inserting the following:

''(b) NEGOTIATED EXCHANGES.—If the Tribes''; and

(B) by striking ''sections 14 and 15'' and inserting ''sections 10 and 11''.

SEC. 120. SEVERABILITY.

Section 24 of the Act of December 22, 1974 (25 U.S.C. 640d–23) is amended by striking ''SEC. 24. If'' and inserting the following:

''SEC. 20. SEVERABILITY.

''If''.

SEC. 121. AUTHORIZATION OF APPROPRIATIONS.

Section 25 of the Act of December 22, 1974 (25 U.S.C. 640d–24) is—

(1) moved so as to appear at the end of the Act; and

(2) amended to read as follows:

''SEC. 27. AUTHORIZATION OF APPROPRIATIONS.

''(a) RELOCATION OF HOUSEHOLDS AND MEMBERS.—There is authorized to be appropriated to carry out section 10(b) $13,000,000.

''(b) RELOCATION OF HOUSEHOLDS AND MEMBERS.—There are authorized to be appropriated to carry out section 11 such sums as are necessary for each of fiscal years 2006 through 2008.

''(c) RETURN TO CARRYING CAPACITY AND INSTITUTION OF CONSERVATION PRACTICES.—There is authorized to be appropriated to carry out section 15(a) $10,000,000.

''(d) SURVEY LOCATION OF MONUMENTS AND FENCING OF BOUNDARIES.—There is authorized to be appropriated to carry out section 15(b) $500,000.''.

SEC. 122. FUNDING AND CONSTRUCTION OF HIGH SCHOOL AND MEDICAL CENTER.

Section 27 of the Act of December 22, 1974 (25 U.S.C. 640d–25) is amended by striking ''SEC. 27.'' and all that follows through ''(c) The Secretary'' and inserting the following:

''SEC. 21. FUNDING AND CONSTRUCTION OF HIGH SCHOOL AND MEDICAL CENTER.

''The Secretary''.

SEC. 123. ENVIRONMENTAL IMPACT; WILDERNESS STUDY; CANCELLATION OF LEASES AND PERMITS.

Section 28 of the Act of December 22, 1974 (25 U.S.C. 640d–26) is amended—

(1) by striking ''SEC. 28. (a) No action'' and inserting the following:

''SEC. 22. ENVIRONMENTAL IMPACT; WILDERNESS STUDY; CANCELLATION OF LEASES AND PERMITS.

''(a) IN GENERAL.—No action'';

(2) in subsection (b), by striking ''(b) Any'' and inserting the following:

''(b) EFFECT OF WILDERNESS STUDY.—Any''; and

(3) by adding at the end the following:

''(c) CONSTRUCTION REQUIREMENTS.—

''(1) IN GENERAL.—Any construction activity under this Act shall be carried out in accordance with sections 3 through 7 of the Act

of June 27, 1960 (16 U.S.C. 469a–1 through 469c).

''(2) COMPLIANCE WITH OTHER REQUIREMENTS.—If a construction activity meets the requirements under paragraph (1), the activity shall be considered to be in accordance with any applicable requirement of—

''(A) Public Law 89–665 (80 Stat. 915); and

''(B) the Act of June 8, 1906 (34 Stat. 225, chapter 3060).''.

SEC. 124. ATTORNEY FEES AND COURT COSTS.

Section 29 of the Act of December 22, 1974 (25 U.S.C. 640d–27) is amended—

(1) by striking ''SEC. 29. (a)'' and inserting the following:

''SEC. 23. ATTORNEY FEES AND COURT COSTS.

''(a) IN GENERAL.—'';

(2) in subsection (a)—

(A) by striking ''In any'' and inserting the following:

''(1) IN GENERAL.—In any''; and

(B) by striking ''For each'' and inserting the following:

''(2) AUTHORIZATION OF APPROPRIATIONS.—For each'';

(3) in subsection (b)—

(A) by striking ''(b) Upon'' and inserting the following:

''(b) AWARD BY COURT.—

''(1) IN GENERAL.—On''; and

(B) in the second sentence, by striking ''Any party'' and inserting the following:

''(2) REIMBURSEMENT OF UNITED STATES.—Any party'';

(4) in subsection (c), by striking ''(c) To'' and inserting the following:

''(c) EXCESS DIFFERENCE.—To''; and

(5) in subsection (d)—

(A) by striking ''(d) This'' and inserting the following:

''(d) APPLICATION OF SECTION.—This''; and

(B) by striking ''section 8 or 18(a) of this Act'' and inserting ''section 4 or section 14(a)''.

SEC. 125. LOBBYING.

Section 31 of the Act of December 22, 1974 (25 U.S.C. 640d–29) is amended—

(1) by striking ''SEC. 31. (a) Except'' and inserting the following:

''SEC. 24. LOBBYING.

''(a) IN GENERAL.—Except''; and

(2) in subsection (b), by striking ''(b) Subsection'' and inserting the following:

''(b) APPLICABILITY.—Subsection''.

SEC. 126. NAVAJO REHABILITATION TRUST FUND.

The first section designated as section 32 of the Act of December 22, 1974 (25 U.S.C. 640d–30) is amended—

(1) by striking ''SEC. 32. (a) There'' and inserting the following:

''SEC. 25. NAVAJO REHABILITATION TRUST FUND.

''(a) ESTABLISHMENT.—There'';

(2) in subsection (b), by striking ''(b) All'' and inserting the following:

''(b) DEPOSIT OF INCOME INTO FUND.—All'';

(3) in subsection (c), by striking ''(c) The'' and inserting the following:

''(c) INVESTMENT OF FUNDS.—The'';

(4) in subsection (d)—

(A) by striking ''(d) Funds'' and inserting the following:

''(d) AVAILABILITY OF FUNDS.—Funds'';

(B) in paragraph (1), by striking ''proceedings,'' and inserting ''proceedings;''; and

(C) in paragraph (2), by striking ''Act, or'' and inserting ''Act; or'';

(5) in subsection (e)—

(A) by striking ''(e) By December 1'' and inserting the following:

''(e) EXPENDITURE OF FUNDS.—

''(1) IN GENERAL.—Not later than December 1''; and

(B) in the second sentence, by striking ''Such framework is to be'' and inserting the following:

''(2) REQUIREMENT.—The framework under paragraph (1) shall be'';

(6) in subsection (f)—

(A) by striking ''(f) The'' and inserting the following:

''(f) TERMINATION.—

''(1) IN GENERAL.—The''; and

(B) in the second sentence, by striking ''All funds'' and inserting the following:

''(2) TRANSFER OF REMAINING FUNDS.—All funds''; and

(7) in subsection (g)—

(A) by striking ''(g) There is hereby'' and inserting the following:

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is'';

(B) in the first sentence, by striking ''1990, 1991, 1992, 1993, 1994, and 1995'' and inserting ''2006 through 2008''; and

(C) in the second sentence, by striking ''The income'' and inserting the following:

''(2) INCOME FROM LAND.—The income''.

SEC. 127. AVAILABILITY OF FUNDS FOR RELOCATION ASSISTANCE.

The second section designated as section 32 of the Act of December 22, 1974 (25 U.S.C. 640–31) is amended by striking ''SEC. 32. Nothing'' and inserting the following:

''SEC. 26. AVAILABILITY OF FUNDS FOR RELOCATION ASSISTANCE.''.

''Nothing''.

TITLE II—PERSONNEL OF THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

SEC. 201. RETENTION PREFERENCE.

The second sentence of section 3501(b) of title 5, United States Code, is amended—

(1) by striking ''or'' after ''Senate'' and inserting a comma;

(2) by striking ''or'' after ''Service'' and inserting a comma; and

(3) by inserting '', or to an employee of the Office of Navajo and Hopi Indian Relocation'' before the period.

SEC. 202. SEPARATION PAY.

(a) IN GENERAL.—Chapter 55 of title 5, United States Code, is amended by adding at the end the following:

''§ 5598 Separation pay for certain employees of the Office of Navajo and Hopi Indian Relocation

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), the Commissioner of the Office of Navajo and Hopi Indian Relocation shall establish a program to offer separation pay to employees of the Office of Navajo and Hopi Indian Relocation (referred to in this section as the 'Office') in the same manner as the Secretary of Defense offers separation pay to employees of a defense agency under section 5597.

''(b) SEPARATION PAY.—

''(1) IN GENERAL.—Under the program established under subsection (a), the Commissioner of the Office may offer separation pay only to employees within an occupational group or at a pay level that minimizes the disruption of ongoing Office programs at the time that the separation pay is offered.

''(2) REQUIREMENT.—Any separation pay offered under this subsection—

''(A) shall be paid in a lump sum;

''(B) shall be in an amount equal to $25,000, if paid on or before December 31, 2007;

''(C) shall be in an amount equal to $20,000, if paid after December 31, 2007, and before January 1, 2009;

''(D) shall be in an amount equal to $15,000, if paid after December 31, 2008, and before January 1, 2010;

''(E) shall not—

''(i) be a basis for payment;

''(ii) be considered to be income for the purposes of computing any other type of benefit provided by the Federal Government; and

''(F) if an individual is otherwise entitled to receive any severance pay under section 5595 on the basis of any other separation, shall not be payable in addition to the amount of the severance pay to which that individual is entitled under section 5595.

''(c) PROHIBITION.—No amount shall be payable under this section to any employee of the Office for any separation occurring after December 31, 2009.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 55 of title 5 is amended by adding at the end the following:

''5598. Separation pay for certain employees of the Office of Navajo and Hopi Indian Relocation.''.

SEC. 203. FEDERAL RETIREMENT.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) IMMEDIATE RETIREMENT.—Section 8336(j)(1)(B) of title 5, United States Code, is amended by inserting ''or was employed by the Office of Navajo and Hopi Indian Relocation during the period beginning on January 1, 1985, and ending on the date of separation of that employee'' before the final comma.

(2) COMPUTATION OF ANNUITY.—Section 8339(d) of title 5, United States Code, is amended by adding at the end the following:

''(8) The annuity of an employee of the Office of Navajo and Hopi Indian Relocation described in section 8336(j)(1)(B) shall be determined under subsection (a), except that with respect to service of that employee on or after January 1, 1985, the annuity of that employee shall be in an amount equal to the sum of—

''(A) the product obtained by multiplying—

''(i) 2½ percent of the average pay of the employee; and

''(ii) the quantity of service of the employee on or after January 1, 1985, that does not exceed 10 years; and

''(B) the product obtained by multiplying—

''(i) 2 percent of the average pay of the employee; and

''(ii) the quantity of the service of the employee on or after January 1, 1985, that exceeds 10 years.''.

(b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—

(1) IMMEDIATE RETIREMENT.—Section 8412 of title 5, United States Code, is amended by adding at the end the following:

''(i) An employee of the Office of Navajo and Hopi Indian Relocation is entitled to an annuity if that employee—

''(1) has been continuously employed in the Office of Navajo and Hopi Indian Relocation during the period beginning on January 1, 1985, and ending on the date of separation of that individual; and

''(2)(A) has completed 25 years of service at any age; or

''(B) has attained the age of 50 years and has completed 20 years of service.''.

(2) COMPUTATION OF BASIC ANNUITY.—Section 8415 of title 5, United States Code, is amended—

(1) by redesignating subsection (*l*) as subsection (m);

(2) by redesignating the second subsection designated as subsection (k) as subsection (*l*); and

(3) by adding at the end the following:

''(n) The annuity of an employee retiring under section 8412(i) shall be determined in accordance with subsection (d), except that with respect to service during the period beginning on January 1, 1985, the annuity of the employee shall be an amount equal to the sum of—

''(1) the product obtained by multiplying—

''(A) 2 percent of the average pay of the employee; and

''(B) the quantity of the total service of the employee that does not exceed 10 years; and

''(2) the product obtained by multiplying—

''(A) 1½ percent of the average pay of the employee; and

''(B) the quantity of the total service of the employee that exceeds 10 years.''.

TITLE III—TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS

SEC. 301. DEFINITIONS.

In this title:

(1) FEDERAL AGENCY.—The term ''Federal agency'' has the meaning given the term ''agency'' in section 551(1) of title 5, United States Code.

(2) FUNCTION.—The term ''function'' means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) OFFICE.—The term ''Office'' means the Office of Navajo and Hopi Relocation (including any component of that office).

SEC. 302. TRANSFER OF FUNCTIONS.

Effective on the date of enactment of this Act, there is transferred to the Secretary of the Interior any function of the Office that has not been carried out by the Office on the date of enactment of this Act, as determined by the Secretary of the Interior in accordance with the Act of December 22, 1974 (25 U.S.C. 640 et seq.) (as amended by title I).

SEC. 303. TRANSFER AND ALLOCATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—Except as otherwise provided in this Act and the amendments made by this Act, any asset, liability, contract, property, record, or unexpended balance of appropriations, authorizations, allocations, and other funds made available to carry out the functions transferred by this title shall be transferred to the Secretary of the Interior, subject to section 1531 of title 31, United States Code.

(b) USE OF FUNDS.—Any unexpended funds transferred under subsection (a) shall be used only for the purposes for which the funds were originally authorized and appropriated.

SEC. 304. EFFECT OF TITLE.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—Any legal document relating to a function transferred by this title that is in effect on the date of enactment of this Act shall continue in effect in accordance with the terms of the document until the document is modified or terminated by—

(1) the President;

(2) the Secretary of the Interior;

(3) a court of competent jurisdiction; or

(4) operation of Federal or State law.

(b) PROCEEDINGS NOT AFFECTED.—This title shall not affect any proceeding (including a notice of proposed rulemaking, an administrative proceeding, and an application for a license, permit, certificate, or financial assistance) relating to a function transferred under this title that is pending before the Office of Navajo and Hopi Relocation on the date of enactment of this Act.

By Mr. BINGAMAN (for himself, Ms. SNOWE, Mr. ROCKEFELLER, Mrs. HUTCHISON, Mr. REID, and Mr. JEFFORDS):

S. 1007. A bill to prevent a severe reduction in the Federal medical assistance percentage determined for a State for fiscal year 2006; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today I am introducing legislation with Senators SNOWE, ROCKEFELLER, HUTCHISON, REID, and JEFFORDS that would increase Medicaid Federal matching payments to 28 States by addressing a problem with the Medicaid funding formula that is expected to result in a majority of States in the country having their Federal matching rate drop this coming fiscal year.

Our legislation, the ''Medicaid Formula Fairness Act of 2005,'' would protect these 28 States from decreases in the amount of Federal funding they can expect to receive in fiscal year 2006. For the vulnerable low-income children, pregnant women, disabled, and senior citizens that the Medicaid programs in those 28 States serve. This legislation may be the only thing preventing them from losing their health benefits and joining the ranks of our Nation's uninsured, which is already at 45 million people.

In New Mexico, more than one-in-five or over 400,000 New Mexicans are uninsured and the State is facing a $78 million reduction in the federal Medicaid matching rate for fiscal year 2006. This is not the result of a dramatic upswing in the economy in New Mexico. The most recent poverty data from the U.S. Census Bureau actually indicates an upswing in the percentage of New Mexicans in poverty at 18 percent—the second highest poverty rate in the country.

Thus, at the very time when there are more people in need of medical care through the Medicaid program, the Federal Government is apparently reducing its assistance through Medicaid. So how is this possible?

The first problem is with the Medicaid matching formula itself. It is based on per capita income, which was established as a proxy for both need and State capacity many years ago. We now have much better data on what should be the factors in the Medicaid formula, including poverty and total taxable resource measures, but the old proxy of per capita income remains.

Despite numerous reports from the General Accounting Office, the HHS inspector general, and outside organizations calling for such an update to the Federal Medicaid formula, nothing has happened over the years. Rather than fighting that battle again, our legislation acknowledges that we are stuck with per capita income as the formula factor. Instead, we take issue with how that factor is dropping Federal matching rates across the Nation while the national poverty rate continues to rise. Again, how is this possible?

In the fall of 2004, the Centers for Medicare and Medicaid Services, CMS, published the Federal Medical Assistance Percentage, or FMAP, for fiscal year 2006 based on per capital income, PCI, data from 2001, 2002, and 2003. According to the Federal Funds Information for States, FFIS, Issue Brief in September 2004, changes in the FMAP will cause States to lose a net $527 million in Federal matching funds in the Medicaid Program with decreases of $867 million to 29 States partially offset by increases for 9 States.

CMS acknowledges that 29 States will lose Federal funding, nine States will gain, and the balance of the States will not be impacted by the Medicaid changes because the latter group of 12 States are already at the statutory minimum FMAP of 50 percent.

Federal law dictates that the FMAP is determined based on the ''three most recent calendar years for which satisfactory data are available from the Department of Commerce.'' Thus, for fiscal year 2006, the PCI data used is from the years 2001, 2002, and 2003. The Federal intent of a 3-year rolling average is to limit the fluctuations that States might experience since only one-third of the formula is changed on a yearly basis. In other words, Congress felt it important enough to limit the fluctuations in the matching rate through the 3-year rolling average of PCI data that the result is the use of data from 2001 for the calculation of the fiscal year 2006 FMAP.

However, as analysis by the Oklahoma Health Care Authority indicates, in the case of the calculation, of the fiscal year 2006 FMAP, the U.S. Department of Commerce's Bureau of Economic Analysis, BEA, performed a comprehensive revision of its calculation of PCI in 2003, as it does every 4 to 5 years, and provided revised data for previous years as well. As a result, CMS changed the 2001 and 2002 PCI data for States in the calculation, Consequently, all 3 years of the PCI data were being changed rather than just one-third.

The result is rather dramatic fluctuations—mostly negative—to State FMAP calculations, As the FFIS Issue Brief indicated, ''Fifteen States are projected to have changes of greater than one percentage point in fiscal year 2006, compared to only three for FY 2005.'' Not since 1998 have the fluctuations been this dramatic.

According to the Congressional Research Service (CRS), the average change in the FMAP between fiscal year 2001 and fiscal year 2002 was −0.26 percentage points, for fiscal year 2003 it was +0.32, for fiscal year 2004 it was +0.12, and for fiscal year 2005 it was −0.09. Thus, over this 4-year period, the average change in the national FMAP was less than 0.2 percentage points. However, due in part to the rebenchmarking of data by BEA, the fiscal year 2006 change in the FMAP will be −0.55 percentage points. Compared to average change over the preceeding 4 years, the fiscal year 2006 FMAP change will be almost three times as dramatic.

As a result, 29 States will absorb a decline in the FMAP for fiscal year 2006. The Oklahoma Health Care Authority estimates that this will cost those States $860 million. The largest projected percentage point decreases are for Alaska, −7.42, Wyoming, −3.67, New Mexico, −3.15, Oklahoma, −2.27, Maine, −1.99, West Virginia, −1.66, North Dakota, −1.64, Vermont, −1.62, Utah, −1.38, Montana, −1.36, Alabama, −1.32, Louisiana, −1.25, Nevada, −1.14, and Mississippi, −1.08.

The largest dollar declines would be experienced by the states of New Mexico, −$79 million, Louisiana, −$72 million, Alaska, −$69 million, Tennessee, −$68 million, Oklahoma, −$66 million,

Alabama, −$55 million, and Maine, −$47 million.

FFIS adds, ''While the changes in FY 2006 are significant, for many states they only add to previous reductions. Thirteen states (Alaska, Kentucky, Louisiana, Maine, Montana, New Mexico, North Dakota, Oklahoma, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming) will experience three consecutive reductions—from the fiscal relief FMAP to the base FMAP in FY 2004 to a second reduction in FY 2005 and a third in FY 2006. The cumulative 5-year reduction for a number of States is large, and for many unprecedented—Wyoming (−10.37), Alaska (−9.97), North Dakota (−4.14), Vermont (−3.91), Oklahoma (−3.33), Maine (−3.22), and South Dakota (−3.24).''

The loss in funds to these 29 States is already resulting in planned cuts in benefits and services to Medicaid eligible recipients, such as low-income children, pregnant women, the elderly and disabled, and decreased reimbursement to Medicaid providers, including physicians, hospitals, nursing homes, community health centers, etc.

In an effort to minimize the dramatic fluctuations in the Fiscal Year 2006 FMAP, this legislation would limit the loss of States in the FMAP to 0.5 percentage points, which restores $442 million of the lost Medicaid dollars to 18 States. The bill would also give 10 additional States a higher FMAP if changes to PCI for 2001 and 2002 were not retroactively applied by CMS. This translates to approximately $229 million for a total of $671 million. This is still far less than the $860 million lost to the 29 States by FMAP reductions.

Therefore, this legislation I am introducing with Senator SNOWE and others does not hold States entirely harmless. However, it does limit the losses in Federal Medicaid matching funds that States are expected to absorb due to problems with the use of per capita income as a factor in the Medicaid formula but also in how it is used. Our legislation mitigates those problems, and does so with the expressed intent of preventing millions of additional Americans from joining the ranks of the uninsured as many of our States will be forced to undertake cuts to the Medicaid program to make up for lost Federal funding.

Specifically, the bill allows States to get the better of: 1. the FMAP as calculated by CMS; 2. a recalculated FMAP without retroactively changing the 2001 and 2002 per capita income data; or, 3. a hold harmless limiting the reduction in the FMAP to 0.5 percentage points.

In New Mexico, for example, the ''Medicaid Formula Fairness Act of 2005'' would restore $66 million of the $78 million that New Mexico is scheduled to lose due to the drop in the Federal Medicaid matching rate. The other 27 States that would benefit from the legislation and the estimated amount they would receive are as follows: Texas—$113 million, New Mexico—$66 million, Alaska—$64 million, Oklahoma—$52 million, Louisiana—$43 million, Maine—$35 million, Alabama—$34 million, West Virginia—$27 million, Tennessee—$27 million, Florida—$25 million, Mississippi—$22 million, Arizona—$22 million, Nevada—$17 million, Arkansas—$14 million, Utah—$14 million, North Carolina—$14 million, Wyoming—$13 million, Vermont—$10 million, Wisconsin—$9 million, Rhode Island—$8 million, Georgia—$8 million, Oregon—$6 million, North Dakota—$6 million, Montana—$6 million, South Carolina—$6 million, Idaho—$5 million, South Dakota—$3 million, and Kansas—$2 million.

I would like to thank the Oklahoma Health Care Authority, including Mike Fogarty and Stephen Weiss, for their outstanding work in analyzing the problem with the Fiscal Year 2006 FMAP and for their technical assistance and counsel toward the introduction of this legislation. I would also like to thank Senators SNOWE, ROCKEFELLER, HUTCHISON, REID, and JEFFORDS for providing bipartisan support as original cosponsors of this important legislation.

I ask unanimous consent that the text of the bill and a letter be printed in the RECORD.

There be no objection, the material was ordered to be printed in the RECORD.

S. 1007

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicaid Formula Fairness Act of 2005''.

SEC. 2. LIMITATION ON SEVERE REDUCTION IN THE MEDICAID FMAP FOR FISCAL YEAR 2006.

(a) LIMITATION ON REDUCTION.—In no case shall the FMAP for a State for fiscal year 2006 be less than the greater of the following:

(1) HALF PERCENTAGE POINT DECREASE.—The FMAP determined for the State for fiscal year 2005, decreased by 0.5 percentage points.

(2) COMPUTATION WITHOUT RETROACTIVE APPLICATION OF REBENCHMARKED PER CAPITA INCOME.—The FMAP that would have been determined for the State for fiscal year 2006 if the per capita incomes for 2001 and 2002 that was used to determine the FMAP for the State for fiscal year 2005 were used.

(b) SCOPE OF APPLICATION.—The FMAP applicable to a State for fiscal year 2006 after the application of subsection (a) shall apply only for purposes of titles XIX and XXI of the Social Security Act (including for purposes of making disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4) and payments under such titles that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1397ee(b))) and shall not apply with respect to payments under title IV of such Act (42 U.S.C. 601 et seq.).

(c) DEFINITIONS.—In this section:

(1) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(2) STATE.—The term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

SEC. 3. REPEAL.

Effective as of October 1, 2006, section 2 is repealed and shall not apply to any fiscal year after fiscal year 2006.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, March 28, 2005.

Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: On behalf of our 4,700 hospital, health care system, and other health care provider members, and our 31,000 individual members, the American Hospital Association (AHA) is writing to express our support for your legislation to limit FY 2006 Medicaid federal medical assistance percentage (FMAP) reductions.

Recently the Bureau of Economic Affairs in the Department of Commerce rebenchmarked per capita income for states, and the Centers for Medicare & Medicaid Services (CMS) retroactively applied the changes. The Medicaid FMAP uses a three-year rolling average to smooth out dramatic changes in the states' matching rates from year-to-year. By retroactively applying the new benchmark, however, CMS undermined the rationale of the three-year rolling average; therefore 22 states will see their FMAP drop by more than 0.5 percentage points in FY 2006—a reduction of an estimated $752 million in FY 2006. About $550 million of this is due to the retroactive recalculation.

The prospect of more Medicaid hospital payment reductions due to decreased federal Medicaid funding is a serious threat to the viability of hospitals and the patients they serve. We realize that it is critical that states provide their share of the state-federal Medicaid funding match in order for vulnerable citizens to obtain and retain health care coverage and health services. Your legislation would help states by limiting the FMAP drop to 0.5 percent, restoring $468 million of the funds that are lost due to the recalculation of per capita income.

We applaud your leadership on this issue and support enactment of this legislation.

Sincerely,

RICK POLLACK,
Executive Vice President.

Ms. SNOWE. Mr. President, I am pleased to join Senator BINGAMAN today, along with Senators ROCKEFELLER, HUTCHISON, REID, and JEFFORDS, in introducing the Medicaid Formula Fairness Act of 2005. This legislation will provide a temporary increase in Medicaid Federal matching payments to 28 States and thereby avoid a significant loss funds which would otherwise occur due to a precipitous and unpredicted drop in the Federal matching rate for these States next year.

Medicaid provides essential medical care to low-income children, pregnant women, parents of dependent children, senior citizens, and people with disabilities and functions as a critical safety net for our most vulnerable populations. Enrollment in the Medicaid program has grown by nearly one-third since the beginning of 2001, as the numbers of those in poverty and individuals without private health insurance continues to increase. In Maine, where we have an older and less wealthy population, more than 300,000 people were enrolled in Medicaid last year. One in five individuals in the State now receives health care services through MaineCare, the State's Medicaid program.

States have experienced severe fiscal stress during the last few years, with sharp declines in revenues and budget shortfalls. This economic downturn, from which many States are only now emerging, has continued to leave many families jobless and without health insurance, forcing to turn to Medicaid. This has put an enormous strain on the States such as Maine which are already strapped with budget shortfalls. Many States reduced Medicaid benefits last year and even more restricted Medicaid eligibility in an effort to satisfy their budgetary obligations.

The formula for calculating the Federal matching rate, known as the Federal Medical Assistance Percentage, FMAP, which determines the Federal Government's share of Medicaid expenditures, has contributed to the Medicaid problems that States are facing. The FMAP formula is designed so that the Federal Government pays a larger portion of Medicaid costs in States with a per capita income lower than the national average. Since Maine is a relatively poor State with a disproportionately large low-income elderly population, it has had a favorable Federal-State match in recent years, 66 percent in 2004. This translated to $1.4 billion in Federal dollars last year—two-thirds of MaineCare's $2 billion in Medicaid spending.

The size of Maine's Medicaid population means that any change in the FMAP has a disproportionately significant impact on Maine's budget. This year, Maine's Federal matching rate decreased from 66.01 percent to 64.89 percent, a drop of more than one percent. The change in FMAP for FY2006 is even greater and will cause 28 States, including Maine, to lose a significant amount of Federal matching funds next year. Maine's Federal matching rate will drop nearly two points, from 64.89 percent to 62.9 percent next year, which will result in Maine losing $46.7 million in Federal matching funds.

Under existing Federal law, the FMAP is determined based on the three most recent calendar years for which data is available from the Department of Commerce. This 3 year ''look back'' captures a period of time that is not necessarily reflective of a State's current financial situation. The FMAP for FY 2003, for example, was calculated in 2001 for the fiscal year beginning October 2002. The FY 2003 FMAP was determined on the basis, of State per capita income over the 3 year period of 1998 through 2000, when State economies were growing significantly. Yet in 2003, when this matching rate was in effect, a serious economic downturn was affecting many State budgets, and that downturn has contributed greatly to the growth of Medicaid for several years now.

We recognized this situation in the last Congress and provided for State fiscal relief by providing a temporary increase in the Federal Medicaid matching rate, which provided $10 billion in fiscal relief to States during fiscal 2003 and 2004, when we passed the Jobs and Growth Tax Relief Reconciliation Act of 2003 but that temporary Federal fiscal relief has now ended.

This Congress has reached a budget agreement which, among its terms, calls for reductions of $10 billion in Medicaid spending over the next 5 years. At this time, therefore, it is especially crucial that we continue to provide sufficient Federal matching funds for Medicaid, which has worked so well over the last 40 years. Our legislation is intended to be just a short term fix, for fiscal year 2006. It is my hope that we will see the creation of a Medicaid Commission to undertake a comprehensive review of the Medicaid program and make recommendations on how to make Federal matching payments more equitable with respect to the States and the populations they serve, as well as how to make them more responsive to changes in States' economic conditions.

However, today, states such as Maine are facing dramatic and unpredictable fluctuations to their State FMAP formulas. This legislation would limit the percentage decrease to a half percentage point for fiscal year 2006 and help mitigate the drastic effects that a severe loss Federal funding would have on our Medicaid population next year.

I therefore urge my colleagues to join us supporting this legislation to help sustain funding for Medicaid in fiscal year 2006 to help ensure that this critical health care safety net remains intact next year for those who need it most.

AMENDMENTS SUBMITTED AND PROPOSED

SA 619. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table.

SA 620. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 621. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 622. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 623. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 624. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 625. Mr. LAUTENBERG (for himself and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra.

SA 626. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 627. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 628. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 629. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 630. Mr. KENNEDY (for himself and Mr. KERRY) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 631. Mr. BOND submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 632. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 633. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 634. Mr. DAYTON (for himself, Mr. LUGAR, Mr. DURBIN, Mr. COLEMAN, Mr. HARKIN, Mr. GRASSLEY, Mr. BINGAMAN, and Mr. SALAZAR) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 635. Mr. BYRD submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 636. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 637. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 638. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 639. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 640. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 641. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 642. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 643. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 644. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 645. Mr. SANTORUM (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 646. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 647. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 648. Mr. VOINOVICH submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 649. Mr. MARTINEZ (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 650. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 651. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE TO THE BILL H.R. 3, SUPRA; WHICH WAS ORDERED TO LIE ON THE TABLE.

SA 652. Mr. DORGAN (for himself and Mr. REID) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra.

SA 653. Mr. DORGAN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 654. Mr. DORGAN (for himself, Mr. CONRAD, Mr. BURNS, Mr. THUNE, Mr. JOHNSON, Mr. NELSON, of Nebraska, and Mr. SALAZAR) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 655. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H .R. 3, supra; which was ordered to lie on the table.

SA 656. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H .R. 3, supra; which was ordered to lie on the table.

SA 657. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H .R. 3, supra; which was ordered to lie on the table.

SA 658. Mr. BOND submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H .R. 3, supra; which was ordered to lie on the table.

SA 659. Mr. DOMENICI submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H .R. 3, supra; which was ordered to lie on the table.

SA 660. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 661. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 662. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 663. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 664. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 665. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 666. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 667. Mr. LOTT submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 668. Mr. OBAMA submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 669. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 670. Mr. OBAMA (for himself, Mr. COLEMAN, Mr. LUGAR, Mr. DURBIN, Mr. HARKIN, Mr. SALAZAR, Mr. BAYH, Mr. TALENT, and Mr. DAYTON) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra ; which was ordered to lie on the table.

SA 671. Mr. OBAMA submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 672. Mr. NELSON, of Florida (for himself, Mr. MARTINEZ, and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 673. Mr. AKAKA (for himself and Mr. ALEXANDER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 674. Mr. SCHUMER (for himself, Mr. KENNEDY, Mrs. CLINTON, Mr. LEVIN, and Mr. SARBANES) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 675. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 676. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 677. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 678. Mr. LEVIN (for himself and Ms. STABENOW) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 679. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 680. Mr. KERRY (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 681. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 682. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 683. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 684. Mr. STEVENS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 685. Mr. STEVENS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 686. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 687. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 688. Mr. ALLARD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 689. Mrs. CLINTON (for herself and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 690. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 691. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 692. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 693. Mr. DODD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 694. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 695. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 696. Mr. SARBANES submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 697. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 698. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 699. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 700. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 701. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 702. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 703. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 704. Mr. VOINOVICH submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 705. Ms. SNOWE (for herself and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 706. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 707. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 708. Mr. SANTORUM submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 709. Ms. COLLINS (for herself and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 710. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 711. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 712. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 713. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 714. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 715. Mr. GREGG submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 716. Mr. GREGG submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 717. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 718. Mr. STEVENS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 719. Mr. McCAIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 720. Mr. McCAIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 721. Mr. LOTT submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 722. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 723. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 724. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 725. Mr. SANTORUM (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 726. Mr. INHOFE (for himself, Mr. BAYH, Mr. WARNER, Mr. JEFFORDS, Mr. LUGAR, Mrs. CLINTON, Mr. CHAFEE, Mr. OBAMA, Ms. LANDRIEU, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 727. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 728. Mrs. CLINTON (for herself and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 729. Mr. VOINOVICH (for himself and Mr. DEWINE) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 730. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 731. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 732. Mr. DODD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 733. Mr. ALEXANDER (for himself, Mr. GRAHAM, Mr. BURR, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 734. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 735. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 736. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 737. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 738. Mr. KYL submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 739. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 740. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 741. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 742. Mr. INHOFE (for Mr. TALENT (for himself and Mr . DODD)) proposed an amendment to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, supra.

TEXT OF AMENDMENTS

SA 619. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1403 and insert the following:

SEC. 1403. INCREASED PENALTIES FOR HIGHER-RISK DRIVERS DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

(a) IN GENERAL.—Section 164 of title 23, United States Code, is amended to read as follows:

"§ 164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence

''(a) DEFINITIONS.—In this section:

''(1) BLOOD ALCOHOL CONCENTRATION.—The term 'blood alcohol concentration' means

grams of alcohol per 100 milliliters of blood or the equivalent grams of alcohol per 210 liters of breath.

''(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms 'driving while intoxicated' and 'driving under the influence' mean driving or being in actual physical control of a motor vehicle while having a blood alcohol concentration above the permitted limit as established by each State.

''(3) HIGHER-RISK IMPAIRED DRIVER LAW.—

''(A) IN GENERAL.—The term 'higher-risk impaired driver law' means a State law that provides, as a minimum penalty, that—

''(i) an individual described in subparagraph (B) shall—

''(I) receive a driver's license suspension;

''(II)(aa) have the motor vehicle driven at the time of arrest impounded or immobilized for not less than 45 days; and

''(bb) for the remainder of the license suspension period, be required to install a certified alcohol ignition interlock device on the vehicle;

''(III)(aa) be subject to an assessment by a certified substance abuse official of the State that assesses the degree of abuse of alcohol by the individual; and

''(bb) be assigned to a treatment program or impaired driving education program, as determined by the assessment; and

''(IV) be imprisoned for not less than 10 days, or have an electronic monitoring device for not less than 100 days; and

''(ii) an individual who is convicted of driving while intoxicated or driving under the influence with a blood alcohol concentration level of 0.15 percent or greater shall—

''(I) receive a driver's license suspension; and

''(II)(aa) be subject to an assessment by a certified substance abuse official of the State that assesses the degree of abuse of alcohol by the individual; and

''(bb) be assigned to a treatment program or impaired driving education program, as determined by the assessment.

''(B) COVERED INDIVIDUALS.—An individual referred to in subparagraph (A)(i) is an individual who—

''(i) is convicted of a second or subsequent offense for driving while intoxicated or driving under the influence within a period of 10 consecutive years;

''(ii) is convicted of a driving-while-suspended offense, if the suspension was the result of a conviction for driving under the influence; or

''(iii) refuses a blood alcohol concentration test while under arrest or investigation for involvement in a fatal or serious injury crash.

''(4) LICENSE SUSPENSION.—The term 'license suspension' means, for a period of not less than 1 year—

''(A) the suspension of all driving privileges of an individual for the duration of the suspension period; or

''(B) a combination of suspension of all driving privileges of an individual for the first 45 days of the suspension period, followed by reinstatement of limited driving privileges requiring the individual to operate only motor vehicles equipped with an ignition interlock system or other device approved by the Secretary during the remainder of the suspension period.

''(5) MOTOR VEHICLE.—

''(A) IN GENERAL.—The term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways.

''(B) EXCLUSIONS.—The term 'motor vehicle' does not include—

''(i) a vehicle operated solely on a rail line; or

''(ii) a commercial vehicle.

''(b) TRANSFER OF FUNDS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), on October 1, 2008, and each October 1 thereafter, if a State has not enacted or is not enforcing a higher-risk impaired driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used in accordance with section 402(a)(3) only to carry out impaired driving programs.

''(2) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—The Secretary shall—

''(A) reserve 25 percent of the funds that would otherwise be transferred to States for a fiscal year under paragraph (1); and

''(B) use the reserved funds to make law enforcement grants, in connection with nationwide traffic safety campaigns, to be used in accordance with section 402(a)(3).''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 164 and inserting the following:

''164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence.''.

SA 620. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 407, strike line 13 and insert the following:

(3)(A) that traverse at least 3 States;

(B) that are connected to a corridor that traverses at least 3 States by—

(i) less than 215 miles; and

(ii) a single Interstate Route; or

(C) that—

(i) are less than 75 miles; and

(ii) connect to a corridor that is otherwise eligible under this subsection; and

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SA 621. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 18___. COMMUNITY ENHANCEMENT STUDY.

(a) IN GENERAL.—The Secretary shall conduct a study on—

(1) the role of well-designed transportation projects in—

(A) promoting economic development;

(B) protecting public health, safety, and the environment; and

(C) enhancing the architectural design and planning of communities; and

(2) the positive economic, cultural, aesthetic, scenic, architectural, and environmental benefits of those projects for communities.

(b) CONTENTS.—The study shall address—

(1) the degree to which well-designed transportation projects—

(A) have positive economic, cultural, aesthetic, scenic, architectural, and environmental benefits for communities;

(B) protect and contribute to improvements in public health and safety; and

(C) use inclusive public participation processes to achieve quicker, more certain, and better results;

(2) the degree to which positive results are achieved by linking transportation, design, and the implementation of community visions for the future; and

(3) methods of facilitating the use of successful models or best practices in transportation investment or development to accomplish—

(A) enhancement of community identity;

(B) protection of public health and safety;

(C) provision of a variety of choices in housing, shopping, transportation, employment, and recreation;

(D) preservation and enhancement of existing infrastructure; and

(E) creation of a greater sense of community through public involvement.

(c) ADMINISTRATION.—

(1) IN GENERAL.—To carry out this section, the Secretary shall make a grant to, or enter into a cooperative agreement or contract with, a national organization with expertise in the design of a wide range of transportation and infrastructure projects, including the design of buildings, public facilities, and surrounding communities.

(2) FEDERAL SHARE.—Notwithstanding section 1221(e)(2) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note), the Federal share of the cost of the study under this section shall be 100 percent.

(d) REPORT.—Not later than September 20, 2006, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study under this section.

(e) AUTHORIZATION.—Of the amounts made available to carry out section 1221 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note), $1,000,000 shall be available for each of fiscal years 2005 and 2006 to carry out this section.

SA 622. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC.___. COMPREHENSIVE COASTAL EVACUATION PLAN.

(a) IN GENERAL.—The Secretary of Transportation and the Secretary of Homeland Security (referred to in this section as the ''Secretaries'') shall jointly develop a written comprehensive plan for evacuation of the coastal areas of the United States during any natural or man-made disaster that affects coastal populations.

(b) CONSULTATION.—In developing the comprehensive plan, the Secretaries shall consult with Federal, State, and local transportation and emergency management officials that have been involved with disaster related evacuations.

(c) CONTENTS.—The comprehensive plan shall—

(1) consider, on a region-by-region basis, the extent to which coastal areas may be affected by a disaster; and

(2) address, at a minimum—

(A) all practical modes of transportation available for evacuations;

(B) methods of communicating evacuation plans and preparing citizens in advance of evacuations;

(C) methods of coordinating communication with evacuees during plan execution;

(D) precise methods for mass evacuations caused by disasters such as hurricanes, flash flooding, and tsunamis; and

(E) recommended policies, strategies, programs, and activities that could improve disaster-related evacuations.

(d) REPORT AND UPDATES.—The Secretaries shall—

(1) not later than October 1, 2006, submit to Congress the written comprehensive plan; and

(2) periodically thereafter, but not less often than every 5 years, update, and submit to Congress any revision to, the plan.

SA 623. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 18___. FINISH PROGRAM.

(a) IN GENERAL.—Subtitle I of chapter 1 of title 23, United States Code (as amended by section 1409(a)), is amended by adding at the end the following:

"§ 180. FINISH program

''(a) IN GENERAL.—The Secretary shall establish and carry out a program, to be known as the 'FINISH program', under which the Secretary shall apportion funds to States for use in the acceleration and completion of coordinated planning, design, and construction of internationally significant highway projects, as determined by the Secretary.

''(b) ELIGIBLE PROJECTS.—The Secretary shall apportion funds under this section for highway projects described in subsection (a) that are located on any of the high priority corridors described in paragraphs (1) and (37), (18) and (20), (23), (26), (38), or (44) of section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032), as determined by the applicable State and approved by the Secretary.

''(c) APPORTIONMENT.—For each of fiscal years 2005 through 2009, the Secretary shall apportion funds made available under this section for the fiscal year to each State in the proportion that, as determined by the applicable State and approved by the Secretary—

''(1) the estimated amount that may be obligated for the fiscal year for the completion of the eligible projects described in subsection (b) in the State; bears to

''(2) the total estimated amount that may be obligated for the fiscal year for the completion of eligible projects described in subsection (b) in all States.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1409(b)), is amended by adding at the end the following:

''180. FINISH program.''.

SA 624. Mr. MURRAY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 18___. ALASKA WAY VIADUCT STUDY.

(a) FINDINGS.—Congress finds that—

(1) in 2001, the Alaska Way Viaduct, a critical segment of the National Highway System in Seattle, Washington, was seriously damaged by the Nisqually earthquake;

(2) an effort to address the possible repair, retrofit, or replacement of the Alaska Way Viaduct that conforms with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is underway; and

(3) as a result of the efforts referred to in paragraph (1), a locally preferred alternative for the Alaska Way Viaduct is being developed.

(b) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Highway Administration.

(2) CITY.—The term ''City'' means the city of Seattle, Washington.

(3) EARTHQUAKE.—The term ''earthquake'' means the Nisqually earthquake of 2001.

(4) FUND.—The term ''Fund'' means the emergency fund authorized under section 125 of title 23, United States Code.

(5) STATE.—The term ''State'' means the Washington State Department of Transportation.

(6) VIADUCT.—The term ''Viaduct'' means the Alaska Way Viaduct.

(c) STUDY.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Administrator, in cooperation with the State and the City, shall conduct a comprehensive study to determine the specific damage to the Viaduct from the earthquake that contribute to the ongoing degradation of the Viaduct.

(2) REQUIREMENTS.—The study under paragraph (1) shall—

(A) identify any repair, retrofit, and replacement costs for the Viaduct that are eligible for additional assistance from the Fund, consistent with the emergency relief manual governing eligible expenses from the Fund; and

(B) determine the amount of assistance from the Fund for which the Viaduct is eligible.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to Congress a report that describes the findings of the study.

(d) ASSISTANCE FROM THE EMERGENCY RELIEF PROGRAM.—If the study indicates that the Viaduct is eligible for assistance from the Fund, the assistance shall be made available for the Viaduct subject to the conditions that—

(1) the amount of assistance provided from the Fund shall not exceed—

(A) 50 percent of the cost of a new comparable replacement structure for the Viaduct; or

(B) if the study determines that repair or retrofit of the Viaduct is feasible, 86.5 percent of the cost of repair or retrofit of the Viaduct;

(2) for any single fiscal year, the amount of assistance provided from the Fund shall not exceed $50,000,000;

(3) amounts made available from the Fund may be applied toward the replacement costs of a new alternative structure for the Viaduct, as provided for under existing Federal Highway Administration regulations; and

(4) if amounts from the Fund are to be used toward the replacement costs of a new alternative structure for the Viaduct under paragraph (3)—

(A) the State and the City shall examine all available capital financing opportunities available under Federal guidelines, including—

(i) funding under subchapter II of chapter 1 of title 23, United States Code;

(ii) funding through a State infrastructure bank;

(iii) user fees (including tolls);

(iv) design-build arrangements; and

(v) private financing;

(B) the State and the City shall explore cost-saving opportunities that may be available by coordinating the Viaduct replacement project and any seawall replacement project for the City; and

(C) usual and reasonable finance costs incurred by the State and the City shall, consistent with existing Federal Highway Administration regulations, be considered to be eligible expenditures under section 125 of title 23, United States Code.

SA 625. Mr. LAUTENBERG (for himself and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. ___. UNIVERSAL HELMET SAFETY STANDARD FOR OPERATION OF MOTORCYCLES.

Section 153 of title 23, United States Code, is amended—

(1) in subsection (a), by striking ''fiscal year—'' and all that follows through ''(2) a law'' and inserting ''fiscal year a law'';

(2) in subsection (f)—

(A) in paragraph (2), by striking ''fiscal year—'' and all that follows through ''(B) had in effect at all times a State law described in subsection (a)(2)'' and inserting ''fiscal year had in effect at all times a State law described in subsection (a)''; and

(B) in paragraph (3), by striking ''fiscal year—'' and all that follows through ''(B) had in effect at all times a State law described in subsection (a)(2)'' and inserting ''fiscal year had in effect at all times a State law described in subsection (a)'';

(3) in subsection (h)—

(A) in paragraph (1), by striking ''subsection (a)(2)'' and inserting ''subsection (a)''; and

(B) in paragraph (2), by striking ''subsection (a)(2)'' and inserting ''subsection (a)'';

(4) by redesignating subsections (i), (j), and (k) as subsections (j), (k), and (l), respectively; and

(5) by inserting after subsection (h) the following:

''(i) MOTORCYCLE HELMET USE LAWS.—

''(1) FISCAL YEAR 2009.—If, at any time in fiscal year 2008, a State does not have in effect and is not enforcing a law that makes unlawful throughout the State the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet, the Secretary shall transfer 1.5 percent of the funds apportioned to the State for fiscal year 2009 under each of subsections (b)(1), (b)(3), and (b)(4) of section 104 to the apportionment of the State under section 402.

''(2) FISCAL YEAR 2010 AND THEREAFTER.—If, at any time in fiscal year beginning after September 30, 2008, a State does not have in effect and is not enforcing a law described in paragraph (1), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of subsections (b)(1), (b)(3), and (b)(4) of section 104 to the apportionment of the State under section 402.

''(3) APPLICABLE PROVISIONS.—Paragraphs (3), (4), and (5) of subsection (h) shall apply

to obligations transferred under this subsection.''.

SA 626. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 267, strike lines 1 through 14 and insert the following:

(4) by redesignating subparagraphs (D) and (E) as subparagraphs (F) and (G), respectively; and

(5) by inserting after subparagraph (C) the following:

''(D) ADDITIONAL ADJUSTMENT FOR PM 2.5 AREAS.—If, in addition to being designated as a nonattainment or maintenance area for ozone or carbon monoxide, or both as described in section 149(b), any county within the area was also designated under the PM–2.5 standard as a nonattainment or maintenance area, the weighted nonattainment or maintenance area population of those counties shall be further multiplied by a factor of 1.2.

''(E) USE OF FUNDS FOR COARSE PARTICULATE MATTER.—Nothing in this paragraph precludes the use by a State of funds made available under this paragraph to address air pollution caused by coarse particulate matter (PM_{10}).''.

SA 627. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of part I of subtitle B of title V, add the following:

SEC. 5204. VOLUMETRIC EXCISE TAX CREDIT FOR ALTERNATIVE FUELS.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Section 4081(a)(2)(A) (relating to rates of tax), as amended by section 5611 of this Act, is amended—

(A) by striking ''and'' at the end of clause (ii),

(B) by striking the period at the end of clause (iii), and

(C) by adding at the end the following new clauses:

''(iv) in the case of liquefied petroleum gas and P Series Fuels, 18.3 cents per gallon,

''(v) in the case of compressed natural gas and hydrogen, 18.3 cents per energy equivalent of a gallon of gasoline, and

''(vi) in the case of liquefied natural gas, any liquid fuel derived from coal (including peat), and liquid hydrocarbons derived from biomass (as defined in section 29(c)(3)), 24.3 cents per gallon.''.

(2) TREATMENT OF ALTERNATIVE FUEL AS TAXABLE FUEL.—

(A) IN GENERAL.—Section 4083(a)(1) (defining taxable fuel) is amended—

(i) by striking ''and'' at the end of subparagraph (B),

(ii) by striking the period at the end of subparagraph (C) and inserting '', and'', and

(iii) by adding at the end the following new subparagraph:

''(D) alternative fuel.''.

(B) DEFINITION.—Section 4083(a) is amended by adding at the end the following new paragraph:

''(4) ALTERNATIVE FUEL.—The term 'alternative fuel' means—

''(A) compressed or liquefied natural gas,

''(B) liquefied petroleum gas,

''(C) P Series Fuels (as defined by the Secretary of Energy under section 13211(2) of title 42, United States Code,

''(D) hydrogen,

''(E) any liquid fuel derived from coal (including peat), and

''(F) liquid hydrocarbons derived from biomass (as defined in section 29(c)(3)).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 4041(a), as amended by section 5101 of this Act, is amended by striking paragraphs (2) and (3) and inserting the following:

''(2) SPECIAL MOTOR FUELS.—

''(A) IN GENERAL.—There is hereby imposed a tax on any alternative fuel (other than gas oil or fuel oil)—

''(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

''(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such fuel under clause (i).

''(B) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this paragraph on the sale or use of any alternative fuel if tax was imposed on such alternative fuel under section 4081 and the tax thereon was not credited or refunded.

''(C) RATE OF TAX.—The rate of the tax imposed by this paragraph shall be the rate of tax specified in clause (iv), (v), or (vi) of section 4081(a)(2)(A) on the alternative fuel which is in effect at the time of such sale or use.

''(D) BUS USES.—No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2) (relating to school bus and intracity transportation).''.

(B) Section 4041(b)(2) is amended by striking ''2007'' both places it appears and inserting ''2005''.

(C) Section 4041, as amended by section 5101 of this Act, is amended by striking subsection (m).

(b) CREDIT FOR ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURES.—

(1) IN GENERAL.—Section 6426(a) (relating to allowance of credits) is amended by striking ''plus'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and by adding at the end the following new paragraphs:

''(3) the alternative fuel credit, plus

''(4) the alternative fuel mixture credit.''.

(2) ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURE CREDIT.—Section 6426 (relating to credit for alcohol fuel and biodiesel mixtures) is amended by redesignating subsections (d) and (e) as subsections (f) and (g) and by inserting after subsection (c) the following new subsection:

''(d) ALTERNATIVE FUEL CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a motor fuel in a highway vehicle.

''(2) ALTERNATIVE FUEL.—For purposes of this section, the term 'alternative fuel' has the meaning given such term by section 4083(a)(4), except such term does not include ethanol or methanol.

''(3) GASOLINE GALLON EQUIVALENT.—For purposes of this subsection, the term 'gasoline gallon equivalent' means, with respect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

''(4) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

''(e) ALTERNATIVE FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alternative fuel mixture credit is the product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer.

''(2) ALTERNATIVE FUEL MIXTURE.—For purposes of this section, the term 'alternative fuel mixture' means a mixture of alternative fuel and taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4083(a)(1)) which—

''(A) is sold by the taxpayer producing such mixture to any person for use as fuel in a highway vehicle, or

''(B) is used as a fuel in a highway vehicle by the taxpayer producing such mixture.

''(3) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.''.

(3) CONFORMING AMENDMENTS.—

(A) The section heading for section 6426 is amended by striking ''**ALCOHOL FUEL AND BIODIESEL**'' and inserting ''**CERTAIN ALTERNATIVE FUEL**''.

(B) The table of sections for subchapter B of chapter 65 is amended by striking ''**ALCOHOL FUEL AND BIODIESEL**'' in the item relating to section 6426 and inserting ''certain alternative fuel''.

(C) Section 6427(a) is amended by striking ''paragraph (2) or (3) of section 4041(a) or section 4041(c)'' and inserting ''section 4041(a)(2) or 4041(c)''.

(D) Section 6427(e) is amended—

(i) by inserting ''or the alternative fuel mixture credit'' after ''biodiesel mixture credit'' in paragraph (1),

(ii) by inserting ''or alternative fuel'' after ''section 40A(d)(2))'' in paragraph (2),

(iii) by striking ''and'' at the end of paragraph (3)(A),

(iv) by striking the period at the end of paragraph (3)(B),

(v) by adding at the end of paragraph (3) the following new subparagraph:

''(C) any alternative fuel or alternative fuel mixture (as defined in section 6426 (d)(2) or (e)(3)) sold or used after December 31, 2010.'', and

(vi) by striking ''OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES'' in the heading and inserting '', BIODIESEL, OR ALTERNATIVE FUEL''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any sale, use, or removal for any period after December 31, 2005.

SA 628. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 439, line 3, insert ''and the National Center for Earthquake Engineering Research at the University of Buffalo,'' after ''Reno,''.

SA 628. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ROAD AND HIGHWAY GRADE SEPARATIONS.

(a) IN GENERAL.—The Secretary shall carry out a program under which the Secretary provides grants to States and units of local government for use in constructing tunnels, bridges, and other means of separating railroad tracks and roads.

(b) PRIORITY.—In providing grants under this section, the Secretary shall give priority to projects involving—

(1) separations of railroad tracks and roads that would have the most impact on improving safety; and

(2) rail lines that have a high volume of goods movement.

(c) REGULATIONS; POLICIES.—The Secretary shall promulgate such regulations and establish such policies as are necessary to carry out this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2005 through 2009.

SA 630. Mr. KENNEDY (for himself and Mr. KERRY) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 483, strike line 17 and insert the following:

''(i) Lesley University-Tufts University Joint Transportation Center, Massachusetts.

SA 631. Mr. BOND submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1234, strike lines 8 and all that follows through ''prevent'' on page 1235, line 1, and insert the following

''(b) NOTICE AND APPROVAL.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any proposed civil action under subsection (a). The notice shall include a copy of the complaint to be filed, as well as other such information as the Secretary may require in order to evaluate the proposed action. Prior to initiating such civil action, the State shall obtain the written approval of the Secretary or the Board, as the case may be. Approval shall only be granted if—

(1) the carrier or broker (as such terms are defined in section 13102 of title 49, United States Code) is not registered with the Department of Transportation; or

(2) the license of a carrier or broker is pending revocation for failure to file proof of the required bodily injury or cargo liability insurance or has been revoked for any other reason by the Department of Transportation; or

(3) the carrier is not rated or has received a conditional or unsatisfactory safety rating by the Department of Transportation; or

(4) the carrier or broker has been licensed with the Department of Transportation for less than five (5) years.

(c) AUTHORITY TO INTERVENE.—Once approval has been granted under subsection (b), nothing in this section shall be construed to limit the independent authority of the Secretary or Board to intervene and be heard on all matters arising in civil action under subsection (a).

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall—

(1) convey a right to initiate or maintain class action lawsuits to enforce Federal laws or regulations; or

(2) prevent

SA 632. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title V, add the following:

Subtitle G—United States Tax Court Modernization

SEC. 5700. SHORT TITLE.

This title may be cited as the ''United States Tax Court Modernization Act''.

PART I—TAX COURT PROCEDURE

SEC. 5701. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date which is 60 days after the date of the enactment of this Act.

SEC. 5702. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking ''and'' at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

''(5) any proceeding under section 7436(c), and''.

(b) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking ''or (4)'' and inserting ''(4), or (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

SEC. 5703. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Section 6214(b) (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 5704. TAX COURT FILING FEE IN ALL CASES COMMENCED BY FILING PETITION.

(a) IN GENERAL.—Section 7451 (relating to fee for filing a Tax Court petition) is amended by striking all that follows ''petition'' and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 5705. AMENDMENTS TO APPOINT EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 7471 (relating to Tax Court employees) is amended to read as follows:

''(a) APPOINTMENT AND COMPENSATION.—

''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

''(2) LAW CLERKS AND SECRETARIES.—

''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

''(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee's credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

''(3) OTHER EMPLOYEES.—The Tax Court may appoint necessary employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such employees shall be subject to removal by the Tax Court.

''(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

''(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

''(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

''(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

''(B) promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

''(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

''(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

''(A) appeal a reduction in grade or removal to the Merit Systems Protection

Board under chapter 43 of title 5, United States Code,

''(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

''(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

''(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

''(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

''(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non-temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

''(10) MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES; AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

''(A) include the principles set forth in section 2301(b) of title 5, United States Code;

''(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

''(C) in the case of any individual who would be a preference eligible in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act.

SEC. 5706. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end ''and to provide services to pro se taxpayers''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

PART II—TAX COURT PENSION AND COMPENSATION

SEC. 5711. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(h) ENTITLEMENT TO ANNUITY.—

''(1) IN GENERAL.—

''(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

''(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 20 percent of such average annual salary, divided by the number of such children.

''(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 40 percent of such average annual salary, divided by the number of such children.

''(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

''(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

''(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

''(3) TERMINATION OF ANNUITY.—

''(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

''(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

''(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

''(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

''(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

''(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge's death, reduced by

''(B) the amount of such salary deductions that were actually made before the date of the judge's death.''.

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.''.

(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(i) DETERMINATIONS BY CHIEF JUDGE.—

''(1) DEPENDENCY AND DISABILITY.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an assassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''.

(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(m) COMPUTATION OF ANNUITIES.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based upon the average annual salary received by such judge for judicial service.''.

(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''.

SEC. 5712. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

SEC. 5713. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court and to any retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 5714. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''.

SEC. 5715. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

SEC. 5716. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(k) THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph as provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

''(i) retires under subsection (b), or

''(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

''(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 5717. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under section 502(a)(5) of such Act shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 5718. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

''SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.''.

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

''(a) APPOINTMENT, TENURE, AND REMOVAL.—

''(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court shall proceed under such rules as may be promulgated by the Tax Court.

''(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.''.

(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking ''90'' and inserting ''92''.

(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

''(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

''(2) TREATMENT OF UNUSED LEAVE.—

''(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is deemed to have remained to the individual's credit.

''(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

''(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.''.

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''MAGISTRATE JUDGES OF THE TAX COURT''.

(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''.

(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

(6) Subsection (c) of section 7471 is amended—

(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 5719. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

''(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

''(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.''.

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

(1) by striking the subsection heading and inserting the following:

''(b) ELECTION.—

''(1) JUDGES.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

''(A) 6 months after the date of the enactment of this paragraph,

''(B) the date the judge takes office, or

''(C) the date the judge marries.''.

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting ''**AND MAGISTRATE JUDGES**'' after ''**JUDGES**''.

(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting ''and magistrate judges'' after ''judges''.

(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

(A) by inserting ''or magistrate judge'' after ''judge'' each place it appears other than in the phrase ''chief judge'', and

(B) by inserting ''or magistrate judge's'' after ''judge's'' each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

(6) Section 7448(j)(1) is amended—

(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

(B) in the last sentence, by striking ''subsections (a)(6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

SEC. 5720. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

''(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

''(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

''(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

''(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

''(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

''(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

''(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

''(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

''(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

''(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

''(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

''(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

''(C) retired pay under section 7447, or

''(D) retired pay under section 7296 of title 38, United States Code.

''(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

''(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

''(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

''(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

''(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

''(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

''(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

''(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

''(i) PAYMENTS PURSUANT TO COURT ORDER.—

''(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service shall be paid (in whole or in part) by the chief judge of the

Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

''(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

''(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

''(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

''(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court receives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

''(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

''(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

''(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

''(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

''(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

''(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

''(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

''(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

''(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

''(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

''(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

''(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

''(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

''(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the first month following the month in which the election is made.

''(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

''(n) LUMP-SUM PAYMENTS.—

''(1) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

''(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

''(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

''(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

''(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

''(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of such section 376 shall be deemed to mean 'magistrate judge of the Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

''(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

''(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

''(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

''(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity of a magistrate judge of the Tax Court shall be paid to that individual.

''(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

''(2) SPOUSES AND FORMER SPOUSES.—

''(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

''(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

''(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court approved property settlement agreement incident to such decree, if—

''(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

''(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

''(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

''(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

''(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

''(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

''(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

''(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

''(i) if the service covered thereby aggregates 1 year or less, or

''(ii) for the fractional part of a month in the total service.

''(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

''(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

''(3) UNFUNDED LIABILITY.—

''(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

''(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

''(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

''(ii) the balance in the Fund as of the date the unfunded liability is determined.

''(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 5721 of the United States Tax Court Modernization Act may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph as provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

''(i) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 5721 of the United States Tax Court Modernization Act,

''(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 5721 of the United States Tax Court Modernization Act, or

''(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 5721 of the United States Tax Court Modernization Act.

''(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 5721 of the United States Tax Court Modernization Act is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

''(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

''(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443A the following new item:

''Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

SEC. 5721. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this part, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of the annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code.

Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 5722. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

"SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

''(1) the aggregate of such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

''(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

''(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

''(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

''Sec. 7443C. Recall of magistrate judges of the Tax Court.''.

SEC. 5723. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this part shall take effect on the date of the enactment of this Act.

SA 633. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 263, between lines 21 and 22, insert the following:

(d) SAN JOAQUIN VALLEY PILOT TRUCK TOLL PROGRAM.—

(1) IN GENERAL.—The Secretary may establish toll facilities in the San Joaquin Valley, California, to test the effectiveness of imposing certain tolls on trucks to abate air pollution in an extreme nonattainment area.

(2) CONDITIONS.—The toll shall be established only if the State of California determines, and the Secretary agrees, that in an extreme nonattainment area, including on a State highway that is regularly used for interstate commerce and is used as alternative route to an interstate highway, a toll would bring about substantial abatement of air pollution from interstate commerce. In making a determination with respect to the abatement, the Secretary may consider alternative collection methods, such as using interstate truck weighing stations to assess variable fees and taking into account the amount of emissions generated.

(3) DEFINITIONS.—In this subsection, the term ''truck'' has the meaning given that term under California law on the date of enactment of this Act.

(4) LIMITATION.—Tolls under this subsection shall only apply to trucks with a gross vehicle weight rating of 14,000 pounds or more.

SA 634. Mr. DAYTON (for himself, Mr. LUGAR, Mr. DURBIN, Mr. COLEMAN, Mr. HARKIN, Mr. BINGAMAN, and Mr. SALAZAR) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle F of title I, insert the following:

SEC. 1623. IDENTIFICATION OF CERTAIN ALTERNATIVE FUELED VEHICLES.

(a) IN GENERAL.—Section 32908 of title 49, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsection (f) and (g), respectively; and

(2) by inserting after subsection (d) the following new subsection:

''(e) IDENTIFICATION OF CERTAIN ALTERNATIVE FUELED VEHICLES.—A manufacturer shall affix, or have affixed, to each dual fueled automobile manufactured by the manufacturer (including each light duty truck) that may be operated on the alternative fuel described in section 32901(a)(1)(D)—

''(1) a permanent label inside the automobile's fuel door compartment that—

''(A) meets the requirements of the regulations prescribed by the Administrator for such label; and

''(B) states that the automobile may be operated on the alternative fuel described in section 32901(a)(1)(D) and identifies such alternative fuel; and

''(2) a temporary label to the window or windshield of the automobile that—

''(A) meets the requirements of the regulations prescribed by the Administrator for such label; and

''(B) identifies the automobile as capable of operating on such alternative fuel.''.

(b) REGULATIONS.—Not later than March 1, 2006, the Administrator of the Environmental Protection Agency shall promulgate regulations—

(1) for the label referred to in paragraph (1) of section 32908(e) of title 49, United States Code, as amended by subsection (a), that describe—

(A) the language that shall be set out on the label, including a statement that the vehicle is capable of operating on a mixture of 85 percent ethanol blended with gasoline; and

(B) the appropriate size and color of the font of such language so that it is conspicuous to the individual introducing fuel into the vehicle; and

(2) for the temporary window or windshield label referred to in paragraph (2) of such section 32908(e), that—

(A) prohibit the label from being removed by any seller prior to the final sale of the vehicle to a consumer; and

(B) describe the specifications of the label, including that the label shall be—

(i) prominently displayed and conspicuous on the vehicle; and

(ii) separate from any other window or windshield sticker, decal, or label.

(c) COMPLIANCE.—

(1) IN GENERAL.—A manufacturer shall be required to comply with the requirements of section 32908(e) of title 49, United State Code, as amended by subsection (a), for a vehicle that is manufactured for a model year after model year 2006.

(2) MODEL YEAR DEFINED.—In this subsection, the term ''model year'' shall have the meaning given such term in section 32901(a) of such title.

(d) VIOLATIONS.—

(1) IN GENERAL.—Section 32908(f) of title 49, United States Code, as redesignated by subsection (a), is amended by inserting ''or (e)'' after ''subsection (b)''.

(2) CONFORMING AMENDMENT.—Section 32911(a) of such title is amended by inserting ''32908(e),'' after ''32908(b),''.

SA 635. Mr. BYRD submitted an amendment intended to be proposed by him to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. TAX CREDIT FOR RURAL COMMUTERS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 25B the following new section:

"SEC. 25C. RURAL COMMUTER CREDIT.

''(a) ALLOWANCE OF CREDIT.—In the case of an eligible commuter, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to $500.

''(b) ELIGIBLE COMMUTER.—For purposes of this section:

''(1) IN GENERAL.—The term 'eligible commuter' means an individual who, during the taxable year—

''(A) resides in an eligible State,

''(B) drives an average of more than 250 miles per week for purposes of commuting to and from any location related to the employment of such individual, and

''(C) has an adjusted gross income of less than—

''(i) in the case of a joint return, $100,000,

''(ii) in the case of a head of household return, $75,000, and

''(iii) in any other case, $50,000.

''(2) ELIGIBLE STATE.—

''(A) IN GENERAL.—The term 'eligible State' means any State with respect to which—

''(i) the percentage of the population residing in urban areas is less than the national average,

''(ii) the disposable personal income per capita is less than 114 percent of the national average, and

''(iii) the use of public transportation by the population for the purpose of commuting to and from work is less than the national average.

''(B) DETERMINATION OF ELIGIBLE STATES.—The Secretary shall determine which States are eligible States under subparagraph (A) based on the most recent data available from the Bureau of the Census.

''(3) STATE.—The term 'State' means the 50 States of the United States.

''(c) TERMINATION.—This section shall not apply to any taxpayer for any taxable year beginning after December 31, 2005.''.

(b) CONFORMING AMENDMENT.—The table of section for subpart A of part IV of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Rural commuter credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SA 636. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 410, between lines 7 and 8, insert the following:

SEC. ___. US-95 PROJECT, LAS VEGAS, NEVADA.

(a) IN GENERAL.—Notwithstanding any other provision of law, the project identified as the preferred alternative in the document entitled ''US–95 Project in Las Vegas, Nevada'', as approved by the Federal Highway Administration on November 18, 1999, and selected in the record of decision dated January 28, 2000, shall be considered to meet all requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and any related laws with respect to the determination contained in the record of decision.

(b) AUTHORIZATION.—The State of Nevada may continue construction of the project described in subsection (a) to completion.

SA 637. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

In title VI, on page 5, line 4, strike ''a semicolon'' and insert '' 'or 20 percent of such recipient's annual formula apportionment under sections 5307 and 5311 in the case where the service is acquired by contract;' ''.

SA 638. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 276, line 9, insert '' (including intercity passenger rail when used for the purpose of a daily commute)'' after ''transit ridership''.

SA 639. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE —SAFE HIGHWAYS AND INFRASTRUCTURE PRESERVATION

SEC. —001. SHORT TITLE.

This title may be cited as the ''Safe Highways and Infrastructure Preservation Act''.

SEC. —002. OPERATION OF RESTRICTED PROPERTY-CARRYING UNITS ON NATIONAL HIGHWAY SYSTEM.

(a) RESTRICTED PROPERTY-CARRYING UNIT DEFINED.—Section 31111(a)(1) of title 49, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

''(3) RESTRICTED PROPERTY-CARRYING UNIT.—The term 'restricted property-carrying unit' means any trailer, semi-trailer, container, or other property-carrying unit that is longer than 53 feet.''.

(b) PROHIBITION ON OPERATION OF RESTRICTED PROPERTY-CARRYING UNITS.—

(1) IN GENERAL.—Section 31111(b)(1)(C) of title 49, United States Code, is amended to read as follows:

''(C) allows operation on any segment of the National Highway System, including the Interstate System, of a restricted property-carrying unit unless the operation is specified on the list published under subsection (h);''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 270 days after the date of enactment of this Act.

(c) LIMITATIONS.—Section 31111 of title 49, United States Code, is amended by adding at the end the following:

''(h) RESTRICTED PROPERTY-CARRYING UNITS.—

''(1) APPLICABILITY OF PROHIBITION.—

''(A) IN GENERAL.—Notwithstanding subsection (b)(1)(C), a restricted property-carrying unit may continue to operate on a segment of the National Highway System if the operation of such unit is specified on the list published under paragraph (2).

''(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All operations specified on the list published under paragraph (2) shall continue to be subject to all State statutes, regulations, limitations and conditions, including routing-specific, commodity-specific, and configuration-specific designations and all other restrictions, in force on June 1, 2005.

''(C) FIRE-FIGHTING UNITS.—Subsection (b)(1)(C) shall not apply to the operation of a restricted property-carrying unit that is used exclusively for fire-fighting.

''(2) LISTING OF RESTRICTED PROPERTY-CARRYING UNITS.—

''(A) IN GENERAL.—Not later than 60 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall initiate a proceeding to determine and publish a list of restricted property-carrying units that were authorized by State officials pursuant to State statute or regulation on June 1, 2005, and in actual and lawful operation on a regular or periodic basis (including seasonal operations) on or before June 1, 2005.

''(B) LIMITATION.—A restricted property-carrying unit may not be included on the list published under subparagraph (A) on the basis that a State law or regulation could have authorized the operation of the unit at some prior date by permit or otherwise.

''(C) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall publish a final list of restricted property-carrying units described in subparagraph (A).

''(D) UPDATES.—The Secretary shall update the list published under subparagraph (C) as necessary to reflect new designations made to the National Highway System.

''(3) APPLICABILITY OF PROHIBITION.—The prohibition established by subsection (b)(1)(C) shall apply to any new designation made to the National Highway System and remain in effect on those portions of the National Highway System that cease to be designated as part of the National Highway System.

''(4) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a restricted property-carrying unit if the restrictions or prohibitions are consistent with the requirements of this section and sections 31112 through 31114.''.

(d) ENFORCEMENT.—The second sentence of section 141(a) of title 23, United States Code, is amended by striking ''section 31112'' and inserting ''sections 31111 and 31112''.

SEC. —003. OPERATION OF LONGER COMBINATION VEHICLES ON NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.—Section 31112 of title 49, United States Code, is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following:

''(f) NATIONAL HIGHWAY SYSTEM.—

''(1) GENERAL RULE.—A State may not allow, on a segment of the National Highway System that is not covered under subsection (b) or (c), the operation of a commercial motor vehicle combination (except a vehicle or load that cannot be dismantled easily or divided easily and that has been issued a special permit under applicable State law) with more than one property-carrying unit (not including the truck tractor) whose property-carrying units are more than—

''(A) the maximum combination trailer, semitrailer, or other type of length limitation allowed by law or regulation of that State on June 1, 2005, or

''(B) the length of the property-carrying units of those commercial motor vehicle combinations, by specific configuration, in actual and lawful operation on a regular or periodic basis (including continuing seasonal operation) in that State on or before June 1, 2005.

''(2) ADDITIONAL LIMITATIONS.—

''(A) APPLICABILITY OF STATE RESTRICTIONS.—A commercial motor vehicle combination whose operation in a State is not prohibited under paragraph (1) may continue to operate in the State on highways described in paragraph (1) only in compliance with all State laws, regulations, limitations, and conditions, including routing-specific and configuration-specific designations and all other restrictions in force in the State on June 1, 2005. However, subject to regulations prescribed by the Secretary under subsection (h), the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 2005, for specific safety purposes and road construction.

''(B) ADDITIONAL STATE RESTRICTIONS.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a commercial motor vehicle combination subject to this section if the restrictions or prohibitions are consistent with this section and sections 31113(a), 31113(b), and 31114.

''(C) MINOR ADJUSTMENTS.—A State making a minor adjustment of a temporary and emergency nature as authorized by subparagraph (A) or further restricting or prohibiting the operation of a commercial motor vehicle combination as authorized by subparagraph (B) shall advise the Secretary not later than 30 days after the action. The Secretary shall publish a notice of the action in the Federal Register.

''(3) LIST OF STATE LENGTH LIMITATIONS.—

''(A) STATE SUBMISSIONS.—Not later than 60 days after the date of enactment of the Safe Highways and Infrastructure Preservation

Act, each State shall submit to the Secretary for publication a complete list of State length limitations applicable to commercial motor vehicle combinations operating in the State on the highways described in paragraph (1). The list shall indicate the applicable State laws and regulations associated with the length limitations. If a State does not submit the information as required, the Secretary shall complete and file the information for the State.

''(B) PUBLICATION OF INTERIM LIST.—Not later than 90 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall publish an interim list in the Federal Register consisting of all information submitted under subparagraph (A). The Secretary shall review for accuracy all information submitted by a State under subparagraph (A) and shall solicit and consider public comment on the accuracy of the information.

''(C) LIMITATION.—A law or regulation may not be included on the list submitted by a State or published by the Secretary merely because it authorized, or could have authorized, by permit or otherwise, the operation of commercial motor vehicle combinations not in actual operation on a regular or periodic basis on or before June 1, 2005.

''(D) PUBLICATION OF FINAL LIST.—Except as revised under this subparagraph or subparagraph (E), the list shall be published as final in the Federal Register not later than 270 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under subparagraph (B). After publication of the final list, commercial motor vehicle combinations prohibited under paragraph (1) may not operate on a highway described in paragraph (1) except as published on the list.

''(E) INACCURACIES.—On the Secretary's own motion or on request by any person (including a State), the Secretary shall review the list published under subparagraph (D). If the Secretary decides there is reason to believe a mistake was made in the accuracy of the list, the Secretary shall begin a proceeding to decide whether a mistake was made. If the Secretary decides there was a mistake, the Secretary shall publish the correction.''.

(b) CONFORMING AMENDMENTS.—Section 31112 of title 49, United States Code, is amended—

(1) by inserting ''126(e) or'' before ''127(d)'' in paragraph (1) of subsection (g) (as redesignated by subsection (a) of this section);

(2) by inserting ''(or June 1, 2005, with respect to highways described in subsection (f)(1))'' after ''June 2, 1991'' in paragraph (3) of subsection (g) (as redesignated by subsection (a) of this section);

(3) by striking ''Not later than June 15, 1992, the Secretary'' and inserting ''The Secretary''; and

(4) by inserting ''or (f)'' after ''subsection (d)'' in paragraph (2) of subsection (h) (as redesignated by subsection (a) of this section).

SEC. —004. TERMINATION OF DETERMINATIONS OF GRANDFATHER RIGHTS.

(a) IN GENERAL.—Section 127 of title 23, United States Code, is amended by adding at the end the following:

''(h) GRANDFATHER RIGHTS.—

''(1) GENERAL RULE.—After the 270th day following the date of enactment of the Safe Highways and Infrastructure Preservation Act, a State may not allow, on a segment of the Interstate System, the operation of a vehicle or combination (other than a longer combination vehicle) exceeding an Interstate weight limit unless the operation is specified on the list published under paragraph (2).

''(2) LIST OF VEHICLES AND COMBINATIONS.—

''(A) PROCEEDING.—Not later than 60 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall initiate a proceeding to determine and publish a list of vehicles and combinations (other than longer combination vehicles), otherwise exceeding an Interstate weight limit, that the Department of Transportation, any other Federal agency, or a State has determined on or before June 1, 2005, could be lawfully operated within such State—

''(i) on July 1, 1956;

''(ii) in the case of the overall gross weight of any group of 2 or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974; or

''(iii) under a special rule applicable to a State under subsection (a).

''(B) LIMITATIONS.—

''(i) ACTUAL AND LAWFUL OPERATIONS REQUIRED.—An operation of a vehicle or combination may be included on the list published under subparagraph (A) only if the vehicle or combination was in actual and lawful operation in the State on a regular or periodic basis on or before June 1, 2005.

''(ii) STATE AUTHORITY NOT SUFFICIENT.—An operation of a vehicle or combination may not be included on the list published under subparagraph (A) on the basis that a State law or regulation could have authorized the operation of the vehicle or combination at some prior date by permit or otherwise.

''(C) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall publish a final list of vehicles and combinations described in subparagraph (A).

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection does not prevent a State from reducing the gross vehicle weight limitation, the single and tandem axle weight limitations, or the overall maximum gross weight on a group of 2 or more consecutive axles applicable to portions of the Interstate System in the State for operations on the list published under paragraph (2)(C) as long as no such reduction results in a limitation that is less than an Interstate weight limit.

''(4) APPLICABILITY OF EXISTING REQUIREMENTS.—All vehicles and combinations included on the list published under paragraph (2) shall be subject to all routing-specific, commodity-specific, and weight-specific designations in force in a State on June 1, 2005.

''(5) INTERSTATE WEIGHT LIMIT DEFINED.—In this subsection, the term 'Interstate weight limit' means the 80,000 pound gross vehicle weight limitation, the 20,000 pound single axle weight limitation (including enforcement tolerances), the 34,000 pound tandem axle weight limitation (including enforcement tolerances), and the overall maximum gross weight (including enforcement tolerances) on a group of 2 or more consecutive axles produced by application of the formula in subsection (a).''.

(b) CONFORMING AMENDMENT.—The fourth sentence of section 127(a) of title 23, United States Code, is amended by striking ''the State determines''.

SEC. —005. NONDIVISIBLE LOAD PROCEEDING.

Section 127 of title 23, United States Code, is further amended by adding at the end the following:

''(i) NONDIVISIBLE LOADS.—

''(1) PROCEEDING.—Not later than 60 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall initiate a proceeding to define the term 'vehicles and loads which cannot be easily dismantled or divided' as used in subsection (a) and section 31112 of title 49.

''(2) LIST OF COMMODITIES.—

''(A) IN GENERAL.—The definition developed under paragraph (1) shall include a list of commodities (or classes or types of commodities) that do not qualify as nondivisible loads.

''(B) LIMITATION.—The list of commodities developed under paragraph (1) shall not be interpreted to be a comprehensive list of commodities that do not qualify as nondivisible loads.

''(3) REGULATIONS.—Not later than 270 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall issue final regulations setting forth the determination of the Secretary made under paragraph (1). The Secretary shall update the regulations as necessary.

''(4) APPLICABILITY.—Regulations issued under paragraph (2) shall apply to all vehicles and loads operating on the National Highway System.

''(5) STATE REQUIREMENTS.—A State may establish any requirement that is not inconsistent with regulations issued under paragraph (2).

''(6) STATEMENT OF POLICY.—The purpose of this subsection is to promote conformity with Interstate weight limits to preserve publicly funded infrastructure and protect motorists by limiting maximum vehicle weight on key portions of the Federal-aid highway system.''.

SEC. —006. WAIVERS OF WEIGHT LIMITATIONS DURING PERIODS OF NATIONAL EMERGENCY.

Section 127 of title 23, United States Code, is further amended by adding at the end the following:

''(j) WAIVERS DURING PERIODS OF NATIONAL EMERGENCY.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section or section 126, the Secretary, in consultation with the Secretary of Defense or Secretary of Homeland Security, may waive or limit the application of any vehicle weight limit established under this section or section 126 with respect to a highway route during a period of national emergency in order to respond to the effects of the national emergency.

''(2) APPLICABILITY.—Emergency limits established under paragraph (1) shall preempt any inconsistent State vehicle weight limits.''.

SEC. —007. VEHICLE WEIGHT LIMITATIONS—NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.—Title 23, United States Code, is amended by inserting after section 125 the following:

''§ 126. Vehicle weight limitations—National Highway System

''(a) NON-INTERSTATE HIGHWAYS ON NHS.—

''(1) IN GENERAL.—After the 270th day after the date of enactment of the Safe Highways and Infrastructure Preservation Act, any Interstate weight limit that applies to vehicles and combinations (other than longer combination vehicles) operating on the Interstate System in a State under section 127 shall also apply to vehicles and combinations (other than longer combination vehicles) operating on non-Interstate segments of the National Highway System in such State, unless such segments are subject to lower State weight limits as provided for in subsection (d).

''(2) EXISTING HIGHWAYS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), in the case of a non-Interstate segment of the National Highway System that is open to traffic on June 1, 2005, a State may allow the operation of any vehicle or combination (other than a longer combination vehicle) on such segment that the Secretary determines under subsection (b) could be

lawfully operated on such segment on June 1, 2005.

''(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All operations described in subparagraph (A) shall continue to be subject to all State statutes, regulations, limitations and conditions, including routing-specific, commodity-specific, and configuration-specific designations and all other restrictions, in force on June 1, 2005.

''(3) NEW HIGHWAYS.—Subject to subsection (d)(1), the gross vehicle weight limitations and axle loading limitations applicable to all vehicles and combinations (other than longer combination vehicles) on a non-Interstate segment of the National Highway System that is not open to traffic on June 1, 2005, shall be the Interstate weight limit.

''(b) LISTING OF VEHICLES AND COMBINATIONS.—

''(1) IN GENERAL.—The Secretary shall initiate a proceeding to determine and publish a list of vehicles and combinations (other than longer combination vehicles), otherwise exceeding an Interstate weight limit, that could be lawfully operated on a non-Interstate segment of the National Highway System on June 1, 2005.

''(2) REQUIREMENTS.—In publishing a list of vehicles and combinations under paragraph (1), the Secretary shall identify—

''(A) the gross vehicle weight limitations and axle loading limitations in each State applicable, on June 1, 2005, to vehicles and combinations (other than longer combination vehicles) on non-Interstate segments of the National Highway System; and

''(B) operations of vehicles and combinations (other than longer combination vehicles), exceeding State gross vehicle weight limitations and axle loading limitations identified under subparagraph (A), which were in actual and lawful operation on a regular or periodic basis (including seasonal operations) on June 1, 2005.

''(3) LIMITATION.—An operation of a vehicle or combination may not be included on the list published under paragraph (1) on the basis that a State law or regulation could have authorized such operation at some prior date by permit or otherwise.

''(4) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall publish a final list of vehicles and combinations described in paragraph (1).

''(5) UPDATES.—The Secretary shall update the list published under paragraph (1) as necessary to reflect new designations made to the National Highway System.

''(c) APPLICABILITY OF LIMITATIONS.—The limitations established by subsection (a) shall apply to any new designation made to the National Highway System and remain in effect on those non-Interstate highways that cease to be designated as part of the National Highway System.

''(d) LIMITATIONS ON STATUTORY CONSTRUCTION.—

''(1) STATE ENFORCEMENT OF MORE RESTRICTIVE WEIGHT LIMITS.—This section does not prevent a State from maintaining or imposing a weight limitation that is more restrictive than the Interstate weight limit on vehicles or combinations (other than longer combination vehicles) operating on a non-Interstate segment of the National Highway System.

''(2) STATE ACTIONS TO REDUCE WEIGHT LIMITS.—This section does not prevent a State from reducing the State's gross vehicle weight limitation, single or tandem axle weight limitations, or the overall maximum gross weight on 2 or more consecutive axles on any non-Interstate segment of the National Highway System.

''(e) LONGER COMBINATION VEHICLES.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—After the 270th day after the date of enactment of the Safe Highways and Infrastructure Preservation Act, a longer combination vehicle may continue to operate on a non-Interstate segment of the National Highway System only if the operation of the longer combination vehicle configuration type was authorized by State officials pursuant to State statute or regulation on June 1, 2005, and in actual and lawful operation on a regular or periodic basis (including seasonal operations) on or before June 1, 2005.

''(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All operations described in subparagraph (A) shall continue to be subject to all State statutes, regulations, limitations and conditions, including routing-specific, commodity-specific, and configuration-specific designations and all other restrictions, in force on June 1, 2005.

''(2) LISTING OF VEHICLES AND COMBINATIONS.—

''(A) IN GENERAL.—Not later than 60 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall initiate a proceeding to determine and publish a list of longer combination vehicles that could be lawfully operated on non-Interstate segments of the National Highway System on June 1, 2005.

''(B) LIMITATION.—A longer combination vehicle may not be included on the list published under subparagraph (A) on the basis that a State law or regulation could have authorized the operation of such vehicle at some prior date by permit or otherwise.

''(C) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of the Safe Highways and Infrastructure Preservation Act, the Secretary shall publish a final list of longer combination vehicles described in subparagraph (A).

''(D) UPDATES.—The Secretary shall update the list published under subparagraph (A) as necessary to reflect new designations made to the National Highway System.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a longer combination vehicle if the restrictions or prohibitions are consistent with the requirements of section 127 of this title and sections 31112 through 31114 of title 49, United States Code.

''(f) MODEL SCHEDULE OF FINES.—

''(1) IN GENERAL.—The Secretary, in consultation with the States, shall establish a model schedule of fines to be assessed for violations of this section.

''(2) PURPOSE.—The purpose of the schedule of fines shall be to ensure that fines are sufficient to deter violations of the requirements of this section and to permit States to recover costs associated with damages caused to the National Highway System by the operation of such vehicles.

''(3) ADOPTION BY STATES.—The Secretary shall encourage but not require States to adopt the schedule of fines.

''(g) DEFINITIONS.—In this section:

''(1) INTERSTATE WEIGHT LIMIT.—The term 'Interstate weight limit' has the meaning given that term in section 127(h).

''(2) LONGER COMBINATION VEHICLE.—The term 'longer combination vehicle' has the meaning given that term in section 127(d).''.

(b) ENFORCEMENT OF REQUIREMENTS.—Section 141(a) of title 23, United States Code, is amended—

(1) by striking ''the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System'' and inserting ''the National Highway System, including the Interstate System,''; and

(2) by striking ''section 127'' and inserting ''sections 126 and 127''.

(c) CONFORMING AMENDMENT.—The chapter analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 125 the following:

''126. Vehicle weight limitations—National Highway System.''.

SA 640. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 143, after the matter following line 25, insert the following:

SEC. 14_____. VEHICLE WEIGHT LIMITATIONS, INTERSTATE ROUTE 94, NORTH DAKOTA.

Section 127(a) of title 23, United States Code, is amended by adding at the end the following: ''Notwithstanding any other provision of law, a vehicle that, with respect to weight distribution characteristics, could lawfully operate in North Dakota as of January 1, 2004, on United States Route 52 (including the United States Route 52 bypass in Jamestown, North Dakota), or on United States Route 281, may operate on Interstate Route 94 in the State of North Dakota, between the intersection of Interstate Route 94 and United States Route 281 and the intersection of Interstate Route 94 and United States Route 52 bypass (including interchanges) under the same conditions under which the vehicle operates in the State of North Dakota on United States Route 52 (including the United States Route 52 bypass) or United States Route 281.''.

SA 641. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title I, insert the following:

SEC. 14_____. VEHICLE WEIGHT LIMITATIONS, INTERSTATE ROUTE 94, NORTH DAKOTA.

Section 127(a) of title 23, United States Code, is amended by adding at the end the following: ''Notwithstanding any other provision of law, a vehicle that, with respect to weight distribution characteristics, could lawfully operate in North Dakota as of January 1, 2004, on United States Route 52 (including the United States Route 52 bypass in Jamestown, North Dakota), or on United States Route 281, may operate on Interstate Route 94 in the State of North Dakota, between the intersection of Interstate Route 94 and United States Route 281 and the intersection of Interstate Route 94 and United States Route 52 bypass (including interchanges) under the same conditions under which the vehicle operates in the State of North Dakota on United States Route 52 (including the United States Route 52 bypass) or United States Route 281.''.

SA 642. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the

bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. ___. BRIDGE CONSTRUCTION, NORTH DAKOTA.

Notwithstanding any other provision of law, and regardless of the source of Federal funds, the Federal share of the eligible costs of construction of a bridge between Bismarck, North Dakota, and Mandan, North Dakota, shall be 90 percent.

SA 643. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 410, between lines 7 and 8, insert the following:

SEC. ___. BRIDGE CONSTRUCTION, NORTH DAKOTA.

Notwithstanding any other provision of law, and regardless of the source of Federal funds, the Federal share of the eligible costs of construction of a bridge between Bismarck, North Dakota, and Mandan, North Dakota, shall be 90 percent.

SA 644. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1814 and insert the following:

SEC. 1814. PARKING PILOT PROGRAMS. .

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1813(a)), is amended by adding at the end the following:

"SEC. 176. PARKING PILOT PROGRAMS.

''(a) COMMERCIAL TRUCK PARKING PILOT PROGRAM.—

''(1) ESTABLISHMENT.—In cooperation with appropriate State, regional, and local governments, the Secretary shall establish a pilot program to increase the availability of, and information about, long-term parking for drivers of commercial motor vehicles on the National Highway System.

''(2) ALLOCATION OF FUNDS.—

''(A) IN GENERAL.—The Secretary shall allocate funds made available under this subsection to States, metropolitan planning organizations, and local governments, giving preference to applicants that demonstrate the most severe shortage of commercial vehicle parking capacity on the corridor to be addressed.

''(B) NOTICE AND COMMENT.—Prior to allocating funds under this subsection to a particular project, the Secretary shall—

''(i) publish the application in the Federal Register;

''(ii) seek public comment on the proposed project for a period of not less than 90 days; and

''(iii) evaluate and consider all comments received concerning the proposed project.

''(C) CRITERIA.—In allocating funds under this subsection for the construction of safety rest areas, or for commercial motor vehicle parking facilities that are adjacent to commercial truck stops or travel plazas, the Secretary shall give priority to an applicant that—

''(i) demonstrates a severe shortage of commercial vehicle parking capacity on the corridor to be addressed;

''(ii) consults with affected State and local governments, community groups, private providers of commercial vehicle parking, and motorist and trucking organizations; and

''(iii) demonstrates that the project proposed by the applicant is likely to have a positive effect on highway safety, traffic congestion, or air quality.

''(D) REQUIREMENTS.—An applicant that applies for funds made available under this subsection for construction of safety rest areas, or for commercial motor vehicle parking facilities that are adjacent to commercial truck stops or travel plazas, shall include in the application an analysis of reasonable alternatives, including—

''(i) the impact of the availability of additional information to commercial vehicle drivers regarding the location and availability of parking throughout the corridor; and

''(ii) the extent to which private providers of parking for commercial vehicles are able to meet current and future commercial vehicle parking demands in the corridor.

''(3) USE OF ALLOCATED FUNDS.—

''(A) IN GENERAL.—A recipient of funds allocated under this subsection shall use the funds to carry out the project proposed in the application submitted by the recipient to the Secretary.

''(B) TYPES OF PROJECTS.—Funds under this subsection shall be available for obligation for projects that serve the National Highway System, including—

''(i) construction of safety rest areas that include parking for commercial motor vehicles;

''(ii) construction of commercial motor vehicle parking facilities that are adjacent to commercial truck stops and travel plazas;

''(iii) costs associated with the opening of facilities (including inspection and weigh stations and park-and-ride facilities) to provide commercial motor vehicle parking;

''(iv) projects that promote awareness of the availability of public or private commercial motor vehicle parking on the National Highway System, including parking in connection with intelligent transportation systems and other systems;

''(v) construction of turnouts along the National Highway System for commercial motor vehicles;

''(vi) capital improvements to public commercial motor vehicle truck parking facilities closed on a seasonal basis in order to allow the facilities to remain open year-around; and

''(vii) improvements to the geometric design at interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

''(4) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall submit to Congress a report on the results of the pilot program carried out under this subsection.

''(5) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be consistent with section 120.

''(6) FUNDING.—

''(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $8,930,818 for each of fiscal years 2005 through 2009.

''(B) CONTRACT AUTHORITY.—Funds authorized under this paragraph shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

''(b) CORRIDOR AND FRINGE PARKING PILOT PROGRAM.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—In cooperation with appropriate State, regional, and local governments, the Secretary shall carry out a pilot program to provide corridor and fringe parking facilities.

''(B) PRIMARY FUNCTION.—The primary function of a corridor and fringe parking facility funded under this subsection shall be to provide parking capacity to support car pooling, van pooling, ride sharing, commuting, and high occupancy vehicle travel.

''(C) OVERNIGHT PARKING.—A State may permit a facility described in subparagraph (B) to be used for the overnight parking of commercial vehicles if the use does not foreclose or unduly limit the primary function of the facility described in subparagraph (B).

''(2) ALLOCATION OF FUNDS.—

''(A) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to States.

''(B) CRITERIA.—In allocating funds under this subsection, the Secretary shall give priority to a State that—

''(i) demonstrates demand for corridor and fringe parking on the corridor to be addressed;

''(ii) consults with affected metropolitan planning organizations, local governments, community groups, and providers of corridor and fringe parking; and

''(iii) demonstrates that the project proposed by the State is likely to have a positive effect on ride sharing, traffic congestion, or air quality.

''(3) USE OF ALLOCATED FUNDS.—

''(A) IN GENERAL.—A recipient of funds allocated under this subsection shall use the funds to carry out the project proposed in the application submitted by the recipient to the Secretary.

''(B) TYPES OF PROJECTS.—Funds under this subsection shall be available for obligation for projects that serve the Federal-aid system, including—

''(i) construction of corridor and fringe parking facilities;

''(ii) costs associated with the opening of facilities;

''(iii) projects that promote awareness of the availability of corridor and fringe parking through the use of signage and other means;

''(iv) capital improvements to corridor and fringe parking facilities closed on a seasonal basis in order to allow the facilities to remain open year-around; and

''(v) improvements to the geometric design on adjoining roadways to facilitate access to, and egress from, corridor and fringe parking facilities.

''(4) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall submit to Congress a report on the results of the pilot program carried out under this subsection.

''(5) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be consistent with section 120.

''(6) FUNDING.—

''(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $8,930,818 for each of fiscal years 2005 through 2009.

''(B) CONTRACT AUTHORITY.—Funds authorized under this paragraph shall be available for obligation in the same manner as if the funds were apportioned under this chapter.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section

1813(c)), is amended by adding at the end the following:

''176. Parking pilot programs.''.

SA 645. Mr. SANTORUM (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 800, strike line 21 and all that follows through page 804, line 19, and insert the following:

''(2) SPECIAL RULE FOR FISCAL YEARS 2005 THROUGH 2009.—

''(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for each of the fiscal years 2005 through 2009, to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000, as determined by the 2000 decennial census of population if—

''(i) the urbanized area had a population of less than 200,000, as determined by the 1990 decennial census of population;

''(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 1990 decennial census of population;

''(iii) the area was not designated as an urbanized area, as determined by the 1990 decennial census of population; or

''(iv) a portion of the area was not designated as an urbanized area, as determined by the 1990 decennial census, and received assistance under section 5311 in fiscal year 2002.

''(B) MAXIMUM AMOUNTS IN FISCAL YEARS 2005 THROUGH 2007.—In each of the fiscal years 2005 through 2007—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 50 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 50 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less 50 percent of the amount the portion of the area received under section 5311 for fiscal year 2002.

''(C) MAXIMUM AMOUNTS IN FISCAL YEARS 2008 AND 2009.—In each of the fiscal years 2008 and 2009—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 25 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 25 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than 25 percent of the amount the portion of the area received under section 5311 in fiscal year 2002.''; and

SA 646. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 1. REDUCTIONS

The total spending in this bill shall be reduced by $11,100,000,000, by reducing the totals by the following amounts—

(a) STP Enhancements (Sec. 1104(4)): reduce by $2,800,000,000;

(b) Maglev (Sec. 1819): reduce by $2,000,000,000;

(c) Ferry Boats (Sec. 1101(14)) and Sec. 1204): reduce by $235,000,000;

(d) Truck Parking (Sec. 1814(a)): reduce by $47,010,000;

(e) Puerto Rican Highways (Sec. 1101(15)): reduce by $500,000,000;

(f) Congestion Mitigation and Air Quality (Sec. 1101(5)): reduce by $4,479,000,000;

(g) Administrative Expenses (Sec. 1103(a)(1)): reduce by $348,000,000;

(h) Historic Covered Bridge (Sec. 1812): reduce by $56,000,000;

(i) Transportation Infrastructure Finance and Innovation Act (Sec. 1303): reduce by $500,000,000;

(j) Transportation and Community and System Preservation Program (Sec. 1813): reduce by $135,000,000;

SA 647. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 718, between lines 18 and 19, insert the following:

(b) LIMITATION ON SUSPENSION.—Paragraph (2) of section 9503(c) is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULE.—Notwithstanding any other provision of this paragraph, the Secretary shall pay from time to time from the Highway Trust Fund into the general fund of the Treasury amounts—

''(i)(I) described in subparagraph (A)(i) with respect to claims filed for the periods ending after March 30, 2005, and before October 1, 2009, and

''(II) described in subparagraph (A)(ii) with respect to fuel used after March 30, 2005, and before October 1, 2009, and

''(ii) which the Secretary estimates are paid for fraudulent or false claims under sections 34, 6420, 6421, and 6427 which the Secretary will not be able to discover.''.

SA 648. Mr. VOINOVICH submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1069, after line 10, add the following:

SEC. 7155. SCHOOL BUS ENDORSEMENT KNOWLEDGE TEST REQUIREMENT.

The Secretary shall recognize any driver who passes a test approved by the Federal Motor Carrier Safety Administration as meeting the knowledge test requirement for a school bus endorsement under section 383.123 of title 49, Code of Federal Regulations.

SA 649. Mr. MARTINEZ (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 18___. HIGH PRIORITY CORRIDORS.

Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032) is amended by adding at the end the following:

''(46) The Atlantic Commerce Corridor on Interstate Route 95 from Jacksonville, Florida, to Miami, Florida.''.

SA 650. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1224, strike lines 6 through 10 and insert the following:

SEC. 7402. DEFINITIONS; APPLICATION OF PROVISIONS.

(a) TERMS USED IN THIS CHAPTER.—In this chapter, the terms ''carrier'', ''household goods'', ''motor carrier'', ''Secretary'', and ''transportation'' have the meaning given such terms in section 13102 of title 49, United States Code.

(b) ''HOUSEHOLD GOODS MOTOR CARRIER'' IN PART B OF SUBTITLE IV OF TITLE 49.—Section 13102 is amended by redesignating paragraphs (12) through (24) as paragraphs (13) through (25) and by inserting after paragraph (11) the following:

''(12) HOUSEHOLD GOODS MOTOR CARRIER.—

''(A) IN GENERAL.—The term 'household goods motor carrier' means a motor carrier described in subparagraph (B) that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

''(i) Binding and nonbinding estimates.

''(ii) Inventorying.

''(iii) Protective packing and unpacking of individual items at personal residences.

''(iv) Loading and unloading at personal residences.

''(B) REGISTRATION REQUIREMENT.—A motor carrier is described in this subparagraph if its operations require it to register as a household goods motor carrier under—

''(i) section 13902 of this title; and

''(ii) regulations prescribed by the Secretary consistent with Federal agency determinations and decisions that were in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

''(C) LIMITED SERVICE EXCLUSION.—The term 'household goods motor carrier' does not include a motor carrier solely because it provides transportation of household goods

entirely packed in, and unpacked from, 1 or more containers or trailers by the individual shipper.''.

(c) APPLICATION OF CERTAIN PROVISIONS OF LAW.—The provisions of title 49, United States Code, or of this chapter, relating to the transportation of household goods apply only to a household goods motor carrier (as defined in section 13102(12) of title 49, United States Code).

SA 651. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 410, between lines 7 and 8, insert the following:

SEC. 18___. VEHICLE WEIGHT LIMITATIONS—INTERSTATE SYSTEM.

Section 127(a) of title 23, United States Code, is amended—

(1) by designating the first through eleventh sentences as paragraphs (1) through (11), respectively; and

(2) by adding at the end the following:

''(12) ARKANSAS.—During the harvesting season of cotton in the State of Arkansas, as determined by the Governor of the State, the State of Arkansas may allow the operation of vehicles with a gross vehicle weight of up to 80,000 pounds for the hauling of cotton seed on—

''(A) United States Route 63 from Gilbert, Arkansas, at the Lake David interchange, to Jonesboro, Arkansas; and

''(B) Interstate Route 555, if that route is open to traffic.''.

SA 652. Mr. DORGAN (for himself and Mr. REID) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of chapter 3 of subtitle E of title I, add the following:

SEC. 15___. INVESTIGATION OF GASOLINE PRICES.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Federal Trade Commission shall conduct an investigation to determine if the price of gasoline is being artificially manipulated by reducing refinery capacity or by any other form of market manipulation.

(b) REPORT.—On completion of the investigation under subsection (a), the Federal Trade Commission shall submit to Congress a report that describes—

(1) the results of the investigation; and

(2) any recommendations of the Federal Trade Commission.

SA 653. Mr. DORGAN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 18___. DESIGNATION OF HIGH PRIORITY CORRIDOR IN NORTH DAKOTA.

Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031; 112 Stat. 191; 115 Stat. 871) is amended by adding at the end the following:

''(46) The Central North American Trade Corridor from the North Dakota-South Dakota border north on United States Route 83 through Bismarck and Minot, North Dakota, to the international border with Canada.''.

SA 654. Mr. DORGAN (for himself, Mr. CONRAD, Mr. BURNS, Mr. THUNE, Mr. JOHNSON, Mr. NELSON of Nebraska, and Mr. SALAZAR) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. ___. DESIGNATION OF HIGH PRIORITY CORRIDOR IN SOUTH DAKOTA, NORTH DAKOTA, AND MONTANA.

Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031; 112 Stat. 191; 115 Stat. 871) is amended by adding at the end the following:

''(46) The Theodore Roosevelt Expressway from Rapid City, South Dakota, north on United States Route 85 to Williston, North Dakota, west on United States Route 2 to Culbertson, Montana, north on Montana Highway 16 to the international border with Canada at the port of Raymond, Montana.''.

SA 655. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 635, between lines 3 and 4, insert the following:

SEC. ___. EXTENSION OF RENEWABLE ENERGY CREDIT.

Section 45(d) (relating to qualified facilities) is amended by striking ''January 1, 2006'' each place it appears and inserting ''January 1, 2009''.

SA 656. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 635, between lines 3 and 4, insert the following:

SEC. ___. EXTENSION AND MODIFICATION OF RENEWABLE ENERGY CREDIT.

(a) EXTENSION.—Section 45(d) (relating to qualified facilities) is amended by striking ''January 1, 2006'' each place it appears and inserting ''January 1, 2009''

(b) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

(1) IN GENERAL.—Section 45(e) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(10) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act.

''(D) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(E) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

SA 657. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 635, between lines 3 and 4, insert the following:

SEC. ___. EXTENSION AND MODIFICATION OF RENEWABLE ENERGY CREDIT.

(a) EXTENSION.—Section 45(d) (relating to qualified facilities) is amended by striking ''January 1, 2006'' each place it appears and inserting ''January 1, 2009''

(b) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

(1) IN GENERAL.—Section 45(e) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(10) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(D) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

SA 658. Mr. BOND submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1240, line 6, strike ''that'' and all that follows through ''damage'' on page 1240, line 8.

SA 659. Mr. DOMENICI submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for othered purposes; which was ordered to lie on the table; as follows:

On page 635, between lines 3 and 4, insert the following:

SEC. ___. DIESEL FUEL TAX EVASION REPORT.

Not later than 60 days after the date of the enactment of this Act, the Commissioner of Internal Revenue shall report to the Committees on Finance and Environment and Public Works of the Senate and the Committees on Ways and Means and Transportation and Infrastructure of the House of Representatives on the availability of new technologies that can be employed to enhance collections of the excise tax imposed on diesel fuel and the plans of the Internal Revenue Service to employ such technologies.

SA 660. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for othered purposes; which was ordered to lie on the table; as follows:

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

SEC. ___. TRANSPORTATION INVESTMENT CREDITS.

Section 120(j)(1) of title 23, United States Code, is amended—

(1) by striking ''A State'' and inserting the following:

''(A) IN GENERAL.—A State''; and

(2) by striking the last sentence and inserting the following:

''(B) SPECIAL RULE FOR USE OF FEDERAL FUNDS.—

''(i) DEFINITION OF FEDERAL FUNDS.—In this paragraph, the term 'Federal funds' does not include a loan of Federal funds, or any other financial assistance required to be repaid to the Federal Government.

''(ii) REDUCTION OF CREDIT.—For a project to build, improve, or maintain a highway, bridge, or tunnel used in interstate travel or commerce that receives assistance under this title, if a public, quasi-public, or private agency has built, improved, or maintained such a highway, bridge, or tunnel using Federal funds, a credit of the agency under subparagraph (A) shall be reduced by a percentage equal to the percentage of the total cost of building, improving, or maintaining the facility that was provided with Federal funds.''.

SA 661. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1803 and insert the following:

SEC. 1803. DESIGN-BUILD CONTRACTING.

(a) IN GENERAL.—Section 112(b) of title 23, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) DESIGN-BUILD CONTRACTING.—

''(A) DEFINITION OF DESIGN-BUILD CONTRACT.—

''(i) IN GENERAL.—In this paragraph, the term 'design-build contract' means an agreement that provides for the design and construction of a project by a contractor.

''(ii) INCLUSIONS.—The term 'design-build contract' includes—

''(I) a franchise agreement; and

''(II) any other form of contract approved by the Secretary.

''(B) AWARD AND USE OF DESIGN-BUILD CONTRACTS.—A State transportation department or local transportation agency may—

''(i) award a design-build contract using any procurement process in accordance with State and local law; and

''(ii) use a design-build contract to develop a project under this chapter.

''(C) COMPLIANCE WITH NEPA.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), a State transportation department or local transportation agency may award a design-build contract under this paragraph, and conduct any action under the design-build contract, before complying with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

''(ii) AWARDS.—A State transportation department or local transportation agency may award a design-build contract before complying with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) if—

''(I) the State transportation department or local transportation agency submits to the Secretary a request for the award of a design-build contract;

''(II) the Secretary approves the request of the State transportation department or local transportation agency under subclause (I); and

''(III) authorization will be provided for the project after the State transportation department or local transportation agency complies with section 102 of that Act (42 U.S.C. 4332).

''(iii) PERMANENT IMPROVEMENTS.—A State transportation department or local transportation agency shall not carry out the final design of a permanent improvement under a design-build contract under this paragraph before complying with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

''(D) EFFECT OF APPROVAL.—Approval by the Secretary of a request of a State transportation department or local transportation agency under subparagraph (C)(ii)(II) shall be considered to be a preliminary action that does not impact the environment.''.

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall update regulations promulgated under section 1307(c) of the Transportation Equity Act for the 21st Century (23 U.S.C. 112 note; 112 Stat. 229) to implement the amendment made by subsection (a).

(2) REQUIREMENTS.—The updated regulations under paragraph (1)—

(A) shall allow a State transportation department or local transportation agency to use any procurement process in accordance with State and local law in awarding design-build contracts (including allowing unsolicited proposals, negotiated procurements, and multiple requests for final proposals);

(B) may require a State transportation department or local transportation agency to justify a sole source procurement or multiple requests for final proposals;

(C) may include best practices guidelines;

(D) shall not preclude State transportation departments and local transportation agencies from allowing the inclusion of alternative technical concepts in base proposals of design-build contractors; and

(E) if a design-build contractor is not authorized to proceed with the final design of a permanent improvement before complying with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), shall not preclude State transportation departments and local transportation agencies from, before complying with section 102 of that Act—

(i) requesting a proposal document;

(ii) awarding a design-build contract; or

(iii) issuing a notice to proceed with preliminary design work under a design-build contract.

SA 662. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1802(c) and insert the following:

(c) CONTRACTOR SUSPENSION AND DEBARMENT POLICY.—

(1) IN GENERAL.—Section 307 of title 49, United States Code, is amended to read as follows:

"§ 307. Contractor suspension and debarment policy

''(a) MANDATORY ENFORCEMENT POLICY.—Notwithstanding any other provision of law, the Secretary—

''(1) shall debar any contractor or subcontractor convicted of a criminal or civil offense involving fraud relating to a project receiving Federal highway or transit funds for such period as the Secretary determines to be appropriate; and

''(2) subject to approval by the Attorney General—

''(A) except as provided in subsection (b), shall suspend any contractor or subcontractor upon indictment for criminal or civil offenses involving fraud; and

''(B) may exclude nonaffiliated subsidiaries of a debarred business entity.

''(b) NATIONAL SECURITY EXCEPTION.—If the Secretary finds that mandatory debarment or suspension of a contractor or subcontractor under subsection (a) would be contrary to the national security of the United States, the Secretary—

''(1) may waive the debarment or suspension; and

''(2) in the instance of each waiver, shall provide notification to Congress of the waiver with appropriate details.''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 49, United States Code, is amended by striking the item relating to section 307 and inserting the following:

''307. Contractor suspension and debarment policy.''.

SA 663. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Section 328(b) of title 23, United States Code (as amended by section 1513(a)), is amended by striking paragraph (1) and inserting the following:

''(1) NUMBER OF PARTICIPATING STATES.—The Secretary may permit not more than 5 States (including the States of Texas and Oklahoma) to participate in the program.

SA 664. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 371, after the matter following line 21, add the following:

SEC. ___. LA ENTRADA AL PACIFICO CORRIDOR, TEXAS.

Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032) is amended by adding at the end the following:

''(46) In the State of Texas, the La Entrada al Pacifico Corridor consisting of any portion of a highway in a corridor on 2 miles of either side of the center line of the highway and—

''(A) State Route 349 from Lamesa to the point on that highway that is closest to 32 degrees, 7 minutes, north latitude, by 102 degrees, 6 minutes, west longitude;

''(B) the segment of any roadway extending from the point described by subparagraph (A) to the point on Farm-to-Market Road 1788 closest to 32 degrees, 0 minutes, north latitude, by 102 degrees, 16 minutes, west longitude;

''(C) Farm-to-Market Road 1788 from the point described by subparagraph (B) to its intersection with Interstate Route 20;

''(D) Interstate Route 20 from its intersection with Farm-to-Market Road 1788 to its intersection with United States Route 385;

''(E) United States Route 385 from Odessa to Fort Stockton, including those portions that parallel United States Route 67 and Interstate Route 10; and

''(F) United States Route 67 from Fort Stockton to Presidio, including those portions that parallel Interstate Route 10 and United States Route 90.''.

SA 665. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Section 510(a)(4)(A) of title 23, United States Code (as added by section 2101(a)), is amended by striking ''subsection (b)'' and inserting ''subsection (b), including the Southwest Region University Transportation Center''.

SA 666. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 398, strike line 17 and all that follows through page 400, line 13, and insert the following:

SEC. 1819. HIGH-SPEED MAGNETIC LEVITATION SYSTEM DEPLOYMENT PROGRAM.

(a) IN GENERAL.—Section 322 of title 23, United States Code, is amended to read as follows:

"§ 322. High-speed magnetic levitation system deployment program

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Federal Railroad Administration.

''(2) ELIGIBLE PROJECT COSTS.—

''(A) IN GENERAL.—The term 'eligible project costs' means the capital cost of the fixed guideway infrastructure of a MAGLEV project, including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities.

''(B) INCLUSION.—The term 'eligible project costs' includes the costs of preconstruction planning activities.

''(C) EXCLUSION.—The term 'eligible project costs' does not include costs incurred for a new station.

''(3) FULL PROJECT COSTS.—The term 'full project costs' means the total capital costs of a MAGLEV project, including eligible project costs and the costs of stations, vehicles, and equipment.

''(4) MAGLEV.—

''(A) IN GENERAL.—The term 'MAGLEV' means transportation systems in revenue service employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

''(B) INCLUSION.—The term 'MAGLEV' includes power, control, and communication facilities required for the safe operation of the vehicles within a system described in subparagraph (A).

''(b) PHASE I—PRECONSTRUCTION PLANNING.—

''(1) IN GENERAL.—A State, State-designated authority, multi-State-designated authority, or special purpose entity may apply to the Administrator for grants to conduct preconstruction planning for proposed new MAGLEV projects, or extensions to MAGLEV systems planned, studied, or deployed under this or any other program.

''(2) APPLICATIONS.—An application for a grant under this subsection shall include a description of the proposed MAGLEV project, including, at a minimum—

''(A) a description of the purpose and need for the proposed project;

''(B) a description of the travel market to be served;

''(C) a description of the technology selected for the project;

''(D) forecasts of ridership and revenues;

''(E) a description of preliminary engineering that is sufficient to provide a reasonable estimate of the capital cost of constructing, operating, and maintaining the project;

''(F) a realistic schedule for construction and equipment for the project;

''(G) an environmental analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

''(H) a preliminary identification of the 1 or more organizations that will construct and operate the project; and

''(I) a cost-benefit analysis and tentative financial plan for construction and operation of the project.

''(3) DEADLINE FOR APPLICATIONS.—The Administrator shall establish an annual deadline for receipt of applications under this subsection.

''(4) EVALUATION.—The Administrator shall evaluate all applications received by the annual deadline to determine whether the applications meet criteria established by the Administrator.

''(5) SELECTION.—The Administrator shall select for Federal support for preconstruction planning any project that the Administrator determines meets the criteria.

''(c) PHASE II—ENVIRONMENTAL ANALYSES.—

''(1) IN GENERAL.—A State, State-designated authority, multi-State-designated authority, or special purpose entity that has conducted (under this section or any other provision of law) 1 or more studies that address each of the requirements of subsection (b)(2) may submit the studies to the Administrator, to support an application for Federal funding to assist in—

''(A) preparing an environmental analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(B) planning for construction, operation, and maintenance of a MAGLEV project.

''(2) CRITERIA FOR APPLICATIONS.—

''(A) IN GENERAL.—The Administrator shall—

''(i) establish criteria for Phase II applications; and

''(ii) evaluate all applications received by that deadline in accordance with criteria established under subparagraph (B).

''(B) CRITERIA.—The Administrator shall establish criteria to evaluate applications that include whether—

''(i) the technology selected is available for deployment at the time of the application;

''(ii) operating revenues combined with known and dedicated sources of other revenues in any year will exceed annual operation and maintenance costs;

''(iii) over the life of the MAGLEV project, total project benefits will exceed total project costs; and

''(iv) the proposed capital financing plan is realistic and does not assume Federal assistance that is greater than the maximums specified in clause (ii).

''(C) PROJECTS SELECTED.—If the Administrator determines that a MAGLEV project meets the criteria established under subparagraph (B), the Administrator may—

''(i) select that project for Federal Phase II support; and

''(ii) publish in the Federal Register a notice of intent to prepare an environmental analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(d) PHASE III—DEPLOYMENT.—A proposed owner of a MAGLEV project that has submitted a draft environmental analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has refined planning for the construction, operation, and maintenance of the MAGLEV project, under this or any other program, may submit an application to the Administrator for Federal funding of a portion of the capital costs of planning, financing, constructing, and equipping the preferred alternative identified in the environmental analysis.

''(e) FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—The Secretary shall make available financial assistance to pay the Federal share of the full project costs of projects selected under this section.

''(2) PREVAILING WAGE AND BUY AMERICA REQUIREMENTS.—Sections 5333(a) and 5323(j) of title 49 shall apply to financial assistance made available under this section and projects funded with that assistance.

''(3) FEDERAL SHARE.—

''(A) PHASE I AND PHASE II.—For Phase I—preconstruction planning and Phase II—environmental analyses carried out under subsections (b) and (c), respectively, the Federal share of the costs of the planning and studies shall be not more than ⅔ of the full cost of the planning and studies.

''(B) PHASE III.—For Phase III—deployment projects carried out under subsection (d), not more than ⅔ of the full capital cost of such a project shall be made available from funds appropriated for this program.

''(4) FUNDING.—

''(A) CONTRACT AUTHORITY; AUTHORIZATION OF APPROPRIATIONS.—

''(i) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for fiscal years 2005 through 2009 to carry out this section—

''(I) $10,000,000 for Phase I—preconstruction planning studies;

''(II) $20,000,000 for Phase II—environmental analyses; and

''(III) $60,000,000 for Phase III—deployment projects.

''(ii) OBLIGATION AUTHORITY.—Funds authorized by this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter I, except that—

''(I) the Federal share of the cost of the project shall be in accordance with paragraph (2); and

''(II) the availability of the funds shall be in accordance with subsection (f).

''(B) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

''(i) PHASE I.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out Phase I—preconstruction planning studies under subsection (b)—

''(I) $12,000,000 for fiscal year 2005;

''(II) $6,000,000 for fiscal year 2006; and

''(III) $2,000,000 for each of fiscal years 2007 through 2009.

''(ii) PHASE II.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out Phase II—environmental analyses under subsection (c)—

''(I) $41,500,000 for fiscal year 2005;

''(II) $25,000,000 for fiscal year 2006;

''(III) $37,000,000 for fiscal year 2007;

''(IV) $21,000,000 for fiscal year 2008; and

''(V) $9,000,000 for fiscal year 2009.

''(iii) PHASE III.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out Phase III—deployment projects under subsection (d)—

''(I) $26,500,000 for fiscal year 2005;

''(II) $500,000,000 for fiscal year 2006;

''(III) $650,000,000 for fiscal year 2007;

''(IV) $850,000,000 for fiscal year 2008; and

''(V) $850,000,000 for fiscal year 2009.

''(iv) PROGRAM ADMINISTRATION.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out administration of this program—

''(I) $2,500,000 for fiscal year 2005;

''(II) $13,000,000 for fiscal year 2006;

''(III) $16,000,000 for fiscal year 2007;

''(IV) $8,000,000 for fiscal year 2008; and

''(V) $5,000,000 for fiscal year 2009.

''(v) RESEARCH AND DEVELOPMENT.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out research and development activities to reduce MAGLEV deployment costs $4,000,000 for each of fiscal years 2005 through 2009.

''(f) AVAILABILITY OF FUNDS.—Funds made available under subsection (e) shall remain available until expended.

''(g) OTHER FEDERAL FUNDS.—Funds made available to a State to carry out the surface transportation program under section 133 and the congestion mitigation and air quality improvement programs under section 149 may be used by any State to pay a portion of the full project costs of an eligible project selected under this section, without requirement for non-Federal funds.

''(h) OTHER FEDERAL FUNDS.—A project selected for funding under this section shall be eligible for other forms of financial assistance provided by this title and title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), including loans, loan guarantees, and lines of credit.

''(i) MANDATORY ADDITIONAL SELECTION.—

''(1) IN GENERAL.—Subject to paragraph 2, in selecting projects for preconstruction planning, deployment, and financial assistance, the Administrator may only provide funds to MAGLEV projects that meet the criteria established under subsection (b)(4).

''(2) PRIORITY FUNDING.—The Administrator shall give priority funding to a MAGLEV project that—

''(A) has already met the criteria in section 1218 of the Transportation Equity Act for the 21st Century (112 Stat. 216) and has received funding prior to the date of enactment of this section as a result of evaluation and contracting procedures for MAGLEV transportation, to the extent that the project continues to fulfill the requirements of this section;

''(B) to the maximum extent practicable, has met safety guidelines established by the Administrator to protect the health and safety of the public;

''(C) is based on designs that ensure the greatest life cycle advantages for the project;

''(D) contains domestic content of at least 70 percent; and

''(E) is designed and developed through public/private partnership entities and continues to meet the criteria set forth in section 1218 of the Transportation Equity Act for the 21st Century (112 Stat. 216) regarding public/private partnerships.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is amended by striking the item relating to section 322 and inserting the following:

''322. High-speed magnetic levitation system deployment program.''.

SA 667. Mr. LOTT submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1234, beginning with line 8, strike through line 6 on page 1235 and insert the following:

''(b) NOTICE.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action.

''(c) AUTHORITY TO INTERVENE.—

''(1) IN GENERAL.—Upon receiving the notice required by subsection (b), the Secretary or Board may intervene in such civil action and upon intervening—

''(A) be heard on all matters arising in such civil action;

''(B) file petitions for appeal of a decision in such civil action; and

''(C) be substituted, upon the filing of a motion with the court, for the State as parens patriae in the action.

''(2) SUBSTITUTION.—If the Secretary or the Board files a motion under paragraph (1)(C), the court shall—

''(A) grant the motion without further hearing or procedure;

''(B) substitute the Secretary or the Board, as appropriate, for the State as plaintiff; and

''(C) if requested by the Secretary or the Board, dismiss the State as a party to the action.

''(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall—

''(1) operate to convey a right to initiate or maintain a class action lawsuit in the enforcement of a Federal law or regulation; or

''(2) prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

SA 668. Mr. OBAMA submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 143, after the matter following line 25, add the following:

SEC. _____. SENSE OF THE SENATE IN SUPPORT OF INCREASED PUBLIC AWARENESS OF BLOOD ALCOHOL CONCENTRATION LEVELS AND THE DANGERS OF DRINKING AND DRIVING.

(a) FINDINGS.—The Senate finds that—

(1) in 2003—

(A) 17,013 Americans died in alcohol-related traffic crashes;

(B) 40 percent of the persons killed in traffic crashes died in alcohol-related crashes; and

(C) drivers with blood alcohol concentration levels over 0.15 were involved in 58 percent of alcohol-related traffic fatalities;

(2) research shows that 77 percent of Americans think they have received enough information about drinking and driving and the way in which alcohol affects individual blood alcohol concentration levels; and

(3) only 28 percent of the American public can correctly identify the legal limit of blood alcohol concentration of the State in which they reside.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the National Highway Traffic Safety Administration should work with State and local governments and independent organizations to increase public awareness of—

(1) State legal limits on blood alcohol concentration levels; and

(2) the dangers of drinking and driving.

SA 669. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. CONSERVE BY BICYCLING PROGRAM.

(a) DEFINITIONS.—In this section:

(1) PROGRAM.—The term ''program'' means the Conserve by Bicycling Program established by subsection (b).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(b) ESTABLISHMENT.—There is established within the Department of Transportation a program to be known as the ''Conserve by Bicycling Program''.

(c) PROJECTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall establish not more than 10 pilot projects that are—

(A) dispersed geographically throughout the United States; and

(B) designed to conserve energy resources by encouraging the use of bicycles in place of motor vehicles.

(2) REQUIREMENTS.—A pilot project described in paragraph (1) shall—

(A) use education and marketing to convert motor vehicle trips to bicycle trips;

(B) document project results and energy savings (in estimated units of energy conserved);

(C) facilitate partnerships among interested parties in at least 2 of the fields of—

(i) transportation;

(ii) law enforcement;

(iii) education;

(iv) public health;

(v) environment; and

(vi) energy;

(D) maximize bicycle facility investments;

(E) demonstrate methods that may be used in other regions of the United States; and

(F) facilitate the continuation of ongoing programs that are sustained by local resources.

(3) COST SHARING.—At least 20 percent of the cost of each pilot project described in paragraph (1) shall be provided from State or local sources.

(d) ENERGY AND BICYCLING RESEARCH STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into a contract with the National Academy of Sciences for, and the National Academy of Sciences shall conduct and submit to Congress a report on, a study on the feasibility of converting motor vehicle trips to bicycle trips.

(2) COMPONENTS.—The study shall—

(A) document the results or progress of the pilot projects under subsection (b);

(B) determine the type and duration of motor vehicle trips that people in the United States may feasibly make by bicycle, taking into consideration factors such as—

(i) weather;

(ii) land use and traffic patterns;

(iii) the carrying capacity of bicycles; and

(iv) bicycle infrastructure;

(C) determine any energy savings that would result from the conversion of motor vehicle trips to bicycle trips;

(D) include a cost-benefit analysis of bicycle infrastructure investments; and

(E) include a description of any factors that would encourage more motor vehicle trips to be replaced with bicycle trips.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $6,200,000, to remain available until expended, of which—

(1) $5,150,000 shall be used to carry out pilot projects described in subsection (c);

(2) $300,000 shall be used by the Secretary to coordinate, publicize, and disseminate the results of the program; and

(3) $750,000 shall be used to carry out subsection (d).

SA 670. Mr. OBAMA (for himself, Mr. COLEMAN, Mr. LUGAR, Mr. DURBIN, Mr. HARKIN, Mr. SALAZAR, Mr. BAYH, Mr. TALENT, and Mr. DAYTON) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 635, between lines 3 and 4, insert the following:

SEC. 5309. INCENTIVES FOR THE INSTALLATION OF ALTERNATIVE FUEL REFUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year.

''(b) LIMITATION.—

''(1) IN GENERAL.—The credit allowed under subsection (a)—

''(A) with respect to any retail alternative fuel vehicle refueling property, shall not exceed $30,000, and

''(B) with respect to any residential alternative fuel vehicle refueling property, shall not exceed $1,000.

''(2) PHASEOUT.—

''(A) IN GENERAL.—In the case of any qualified alternative fuel vehicle refueling property placed in service after December 31, 2010, the limit otherwise applicable under paragraph (1) shall be reduced by—

''(i) 25 percent in the case of any alternative fuel vehicle refueling property placed in service in calendar year 2011, and

''(ii) 50 percent in the case of any alternative fuel vehicle refueling property placed in service in calendar year 2012.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.—The term 'qualified alternative fuel vehicle refueling property' has the same meaning given for clean-fuel vehicle refueling property by section 179A(d), but only with respect to any fuel at least 85 percent of the volume of which consists of ethanol.

''(2) RESIDENTIAL ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.—The term 'residential alternative fuel vehicle refueling property' means qualified alternative fuel vehicle refueling property which is installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer.

''(3) RETAIL ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.—The term 'retail alternative fuel vehicle refueling property' means qualified alternative fuel vehicle refueling property which is of a character subject to an allowance for depreciation.

''(d) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

''(e) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year, such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(f) SPECIAL RULES.—For purposes of this section—

''(1) BASIS REDUCTION.—The basis of any property shall be reduced by the portion of

the cost of such property taken into account under subsection (a).

''(2) NO DOUBLE BENEFIT.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(3) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of any qualified alternative fuel vehicle refueling property the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such property to the person or entity using such property shall be treated as the taxpayer that placed such property in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such property (determined without regard to subsection (d)).

''(4) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

''(5) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any property if the taxpayer elects not to have this section apply to such property.

''(6) RECAPTURE RULES.—Rules similar to the rules of section 179A(e)(4) shall apply.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(h) TERMINATION.—This section shall not apply to any property placed in service after December 31, 2013.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 30B(f)(1).''.

(2) Section 55(c)(2) is amended by inserting ''30B(d),'' after ''30(b)(3),''.

(3) Section 6501(m) is amended by inserting ''30B(f)(5),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B. Alternative fuel vehicle refueling property credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SA 671. Mr. OBAMA submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 410, between lines 7 and 8, insert the following:

SEC. _____. TRANSPORTATION AND LOCAL WORKFORCE INVESTMENT.

(a) FINDINGS.—Congress finds the following:

(1) Federal-aid highway programs provide State and local governments and other recipients substantial funds for projects that produce significant employment and job-training opportunities.

(2) Every $1,000,000,000 in Federal infrastructure investment creates an estimated 47,500 jobs.

(3) Jobs in transportation construction, including apprenticeship positions, typically pay more than twice the minimum wage, and include health and other benefits.

(4) Transportation projects provide the impetus for job training and employment opportunities for low income individuals residing in the area in which a transportation project is planned.

(5) Transportation projects can offer young people, particularly those who are economically disadvantaged, the opportunity to gain productive employment.

(6) The Alameda Corridor, a $2,400,000,000 transportation project, is an example of a transportation project that included a local hiring provision resulting in a full 30 percent of the project jobs being filled by locally hired and trained men and women.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal transportation projects should facilitate and encourage the collaboration between interested persons, including State, Federal, and local governments, community colleges, apprentice programs, local high schools, and other community based organizations that have an interest in improving the job skills of low-income individuals, to help leverage scarce training and community resources and to help ensure local participation in the building of transportation projects.

SA 672. Mr. NELSON (for himself, Mr. MARTINEZ, and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Subtitle D of title I is amended by adding at the end the following:

SEC. 14___. LIVESTOCK TRAILER WEIGHT EXEMPTION.

Section 127(a) of title 23, United States Code, is amended by adding at the end the following: ''The States of Florida and Texas may issue, on payment of an annual fee of $200 for each livestock trailer, special permits to authorize the operation of vehicles with a gross vehicle weight of not more than 90,000 pounds for the hauling of livestock.''.

SA 673. Mr. AKAKA (for himself and Mr. ALEXANDER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 35, strike lines 18 through 21 and insert the following:

(i) $310,000,000 for fiscal year 2005; and

(ii) $320,000,000 for each of fiscal years 2006 through 2009.

SA 674. Mr. SCHUMER (for himself, Mr. KENNEDY, Mrs. CLINTON, Mr. LEVIN, and Mr. SARBANES) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 628, line 23, strike ''$155'' and insert ''$155 ($170 for 2007, $185 for 2008 and $200 for 2009 and thereafter)''.

On page 629, line 5, strike ''2008'' and insert ''2009''.

On page 629, line 7, strike ''2007'' and insert ''2008''.

SA 675. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

SEC. . CERTIFICATION OF VEHICLE EMISSION PERFORMANCE STANDARDS.

(a) VEHICLE EMISSION PERFORMANCE STANDARDS.—Section 13902 (a)(1) of title 49, United States Code, is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and,

(2) by inserting after subparagraph (A) the following:

''(B) the requirement that a motor carrier certifies that, beginning in 2007, the vehicle or vehicles purchased in that year or afterwards and operated by the motor carrier comply with the heavy duty vehicle and engine emissions performance standards and related regulations established by the Administrator of the Environmental Protection Agency pursuant to section 202(a)(3) of the Clean Air Act (42 USC 7521(a)(3));''

(b) STUDY.—Within 180 days following the date of enactment of this Act, the Secretary of Transportation shall make recommendations to Congress on ways to ensure that trucks built prior to 2007 operating in the United States comply with all emissions performance standards of the Clean Air Act applicable to such engines at the time the engine was manufactured.

SA 676. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title V insert the following:

SEC. ___. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 is amended by inserting after section 139A the following new section:

''SEC. 139B. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS.

''(a) IN GENERAL.—Gross income of an individual does not include amounts received, from an organization described in section 170(c), as reimbursement of operating expenses with respect to use of a passenger automobile for the benefit of such organization. The preceding sentence shall apply only to the extent that such reimbursement would be deductible under this chapter if section 274(d) were applied—

''(1) by using the standard business mileage rate established under such section, and

''(2) as if the individual were an employee of an organization not described in section 170(c).

''(b) NO DOUBLE BENEFIT.—Subsection (a) shall not apply with respect to any expenses if the individual claims a deduction or credit for such expenses under any other provision of this title.

''(c) EXEMPTION FROM REPORTING REQUIREMENTS.—Section 6041 shall not apply with respect to reimbursements excluded from income under subsection (a).''.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139A and inserting the following new item:

''Sec. 139B. Reimbursement for use of passenger automobile for charity.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC.___. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking ''$750'' and inserting ''$1,250'', and

(2) by striking ''$15'' and inserting ''$25''.

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

SA 677. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 635, between lines 3 and 4, insert the following:

SEC. ___. MODIFICATION OF EFFECTIVE DATE FOR CIVIL RIGHTS TAX RELIEF.

(a) IN GENERAL.—Section 703(c) of the American Jobs Creation Act of 2004 is amended by striking ''the date of the enactment of this Act'' and inserting ''December 31, 2002,''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

SA 678. Mr. LEVIN (for himself and Ms. STABENOW) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 18___. ADVANCED TECHNOLOGIES.

Section 133(b) of title 23, United States Code (as amended by section 1813(b)), is amended by adding at the end the following:

''(20) Development of advanced motor vehicle technologies that will increase the fuel efficiency of motor vehicles or reduce individual vehicle emissions, as compared to applicable Federal or State regulations, on the condition that not more than 5 percent of the funds apportioned to the State for a fiscal year are used for that purpose.''.

SA 679. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 270, between lines 15 and 16, insert the following:

SEC. 1613. PUBLIC HEALTH PROTECTION.

Section 149 of title 23, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A)—

(i) in clause (i), by striking ''air quality standard; or'' and inserting '' air quality standard that would protect public health;'';

(ii) in clause (ii), by inserting ''that would protect public health'' after ''maintenance area''; and

(iii) by adding at the end the following:

''(ii) the improvement of public health by decreasing air pollutant emissions; or'';

(B) in paragraph (2), by inserting ''that would protect public health'' after ''air quality benefits'';

(C) in paragraph (3), by striking ''or through other factors'' and inserting ''advanced vehicle technologies, consumption of cleaner burning fuels, or other means''; and

(D) in paragraph (5), insert ''or dedicated non-fixed guideways'' after ''high occupancy vehicle lanes'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking ''If a State does not have'' and inserting the following:

''(A) IN GENERAL.—If a State does not have''; and

(ii) by adding at the end the following:

''(B) PRIORITY.—The State shall give priority to projects that—

''(i) promote deployment of advanced technology heavy-duty vehicles and clean fuels; and

''(ii) protect public health.''; and

(B) in paragraph (2)—

(i) by striking ''If a State has'' and inserting the following:

''(A) IN GENERAL.—If a State has''; and

(ii) by adding at the end the following:

''(B) PRIORITY.—The State shall give priority to projects that—

''(i) promote deployment of advanced technology heavy-duty vehicles and clean fuels; and

''(ii) protect public health.''; and

(3) in subsection (e)(4)(B), by inserting ''or advanced technology heavy-duty'' after ''alternative fueled''.

SA 680. Mr. KERRY (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 91, between lines 16 and 17, insert the following:

(c) FERRY DISCRETIONARY GRANT PROGRAM.—For purposes of section 129(c) of title 23, United States Code, a private owner and operator that has entered into a license-fee arrangement with a public transportation authority to provide essential year-round public transportation services to the islands off of Cape Cod, Massachusetts shall be considered publicly operated and shall not be subject to paragraph (4) of such subsection.

SA 681. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 267, strike line 18 and all that follows through page 270, line 15 and insert the following:

SEC. 1612. ADDITION TO CMAQ-ELIGIBLE PROJECTS.

(a) ELIGIBLE PROJECTS.—Section 149(b) of title 23, United States Code, is amended—

(1) in paragraph (4), by striking ''or'' at the end;

(2) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(6) if the project or program is for the purchase of alternative fuel (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) or biodiesel;

''(7) if the project or program involves the purchase of integrated, interoperable emergency communications equipment; or

''(8) if the project or program is for—

''(A) diesel retrofit technologies contained in or related to an emission reduction strategy developed by the State in accordance with subsection (c); and

''(B) outreach activities that are designed to provide information and technical assistance to the owners and operators of diesel equipment and vehicles regarding the emission reduction strategy.''.

(b) STATES RECEIVING MINIMUM APPORTIONMENT.—Section 149(c) of title 23, United States Code, is amended—

(1) in paragraph (1), by striking ''for any project eligible under the surface transportation program under section 133.'' and inserting the following: ''for any project in the State that—

''(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.''; and

(2) in paragraph (2), by striking ''for any project in the State eligible under section 133.'' and inserting the following: ''for any project in the State that—

''(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.''.

(c) RESPONSIBILITY OF STATES.—

(1) DEFINITIONS.—In this subsection:

(A) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(B) CMAQ RESOURCES.—The term ''CMAQ resources'' means resources available to a State to carry out the congestion mitigation and air quality improvement program under section 149 of title 23, United States Code.

(C) DIESEL RETROFIT TECHNOLOGY.—The term ''diesel retrofit technology'' means a replacement, repowering, rebuilding, aftertreatment or other technology, as determined by the Administrator.

(2) EMISSION REDUCTION STRATEGIES.—Each State shall develop, implement, and periodically revise emission reduction strategies comprised of any methods determined to be appropriate by the State that are consistent with section 209 of the Clean Air Act (42 U.S.C. 7542) for engines and vehicles that are—

(A) used in construction projects located in nonattainment and maintenance areas (as those terms are defined in section 101 of the Clean Air Act (42 U.S.C. 7401)); and

(B) funded, in whole or in part, under title 23, United States Code.

(3) STATE CONSIDERATIONS.—In developing emission reduction strategies, each State—

(A) may include any means to reduce emissions that are determined to be appropriate by the State; but

(B) shall—

(i) consider guidance issued by the Administrator under paragraph (5);

(ii) limit technologies to those identified by the Administrator under paragraph (5);

(iii) provide contractors with guidance and technical assistance regarding the implementation of emission reduction strategies;

(iv) give special consideration to small businesses that participate in projects funded under title 23, United States Code;

(v) place priority on the use of—

(I) diesel retrofit technologies and activities;

(II) cost-effective strategies;

(III) financial incentives using CMAQ resources and State resources; and

(IV) strategies that maximize health benefits; and

(vi) not include any activities prohibited by paragraph (4).

(4) STATE LIMITATIONS.—Emission reduction strategies may not—

(A) authorize or recommend the use of bans on equipment or vehicle use during specified periods of a day;

(B) authorize or recommend the use of contract procedures that would require retrofit activities, unless funds are made available by the State under this section or other State authority to offset the cost of those activities; or

(C) authorize the use of contract procedures that would discriminate between bidders on the basis of the bidder's existing equipment or existing vehicle emission technology.

(5) EMISSION REDUCTION STRATEGY GUIDANCE.—The Administrator, in consultation with the Secretary, shall publish a nonbinding list of emission reduction strategies and supporting technical information for—

(A) diesel emission reduction technologies certified or verified by the Administrator, the California Air Resources Board, or any other entity recognized by the Administrator for the same purpose;

(B) diesel emission reduction technologies identified by the Administrator as having an application and approvable test plan for verification by the Administrator or the California Air Resources board that is submitted not later that 18 months of the date of enactment of this Act;

(C) available information regarding the emission reduction effectiveness and cost effectiveness of technologies identified in this paragraph, taking into consideration health effects;

(D) options and recommendations for the structure and content of emission reduction strategies including—

(i) emission reduction performance criteria;

(ii) financial incentives that use CMAQ resources and State resources;

(iii) procedures to facilitate access by contractors to financial incentives;

(iv) contract incentives, allowances, and procedures;

(v) methods of voluntary emission reductions; and

(vi) other means that may be employed to reduce emissions from construction activities; and

(6) USE OF CMAQ FUNDS.—A State may use funds made available under this title and title 23, United States Code, for the congestion mitigation and air quality program under section 149 of title 23, United States Code, to ensure the deployment of the projects or programs described in section 149(b)(8) of title 23, United States Code.

(7) LIMITATION.—States shall give priority in distributing funds received for congestion mitigation and air quality projects and programs to finance diesel retrofit and cost-effective emission reduction activities identified by the States in emission reduction strategies developed under this subsection.

(8) NO EFFECT ON AUTHORITY OR RESTRICTIONS.—Nothing in this subsection modifies any authority or restriction established under the clean Air Act (42 U.S.c. 7401 et seq.).

SA 682. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1266, beginning with line 13, strike through line 5 on page 1267 and insert the following:

''(c) COSTS-BENEFITS REQUIREMENT.—

''(1) IN GENERAL.—A grant may be awarded under this section for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the re-located rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

''(A) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce if the rail line were not so relocated.

''(B) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce.

''(C) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

''(2) OTHER PROJECTS.—The requirements of paragraph (1) do not apply to grants awarded for community quality of life improvements under subsection (b) (1) (A) of this section.

SA 683. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1808(b) and insert the following:

(b) COALFIELDS EXPRESSWAY, VIRGINIA.—

(1) DESIGNATION.—Except as provided in paragrah (2), there is designated as an addition to the Appalachian Development Highway System in the State of Virginia Segment B of the Coalfields Expressway beginning at Corridor B near Pound, Virginia to Clintwood, Virginia.

(2) EXCLUSION OF PORTION OF CORRIDOR H.—The segment of Corridor H in the State of Virginia beginning at the West Virginia State line and ending at Interstate Route 81—

(A) shall be excluded from Corridor H;

(B) shall not be eligible for funding after the date of enactment of this Act; and

(C) may be included on a map of the Appalachian Development Highway System in the State of Virginia for purposes of continuity only.

(3) MODIFICATION OF MILEAGE.—Section 14501(a) of title 40, United States Code, is amended in the second sentence by striking ''3,090'' and inserting ''3,088''.

(c) CONFORMING AMENDMENTS.—

(1) USE OF TOLL CREDITS.—Section 120(j)(1) of title 23, United States Code, is amended by inserting ''and the Appalachian development highway system program under subtitle IV of title 40'' after ''(other than the emergency relief program authorized by section 125''.

(2) ANALYSIS.—The analysis of chapter 1 of title 23, United States Code (as amended by section 1702(b)), is amended by adding at the end the following:

''170. Appalachian development highway system.''.

SA 684. Mr. STEVENS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 38, line 13, strike ''$28,158,868'' and insert ''$70,000,000''.

SA 685. Mrs. STEVENS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 50, strike lines 16 through 18, and insert the following:

(c) ALASKA HIGHWAY.—Section 104(b)(1)(A) of title 23, United States Code, is amended by striking ''$18,800,000 for each of fiscal years 1998 through 2002'' and inserting ''$30,000,000 for each of fiscal years 2005 through 2009''.

SA 686. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1606(a)(1)(B) and insert the following:

(B) SERIOUSLY DEGRADED.—The term ''seriously degraded'', with respect to high occupancy vehicle lanes, means that an high occupancy vehicle facility fails to maintain a minimum average operating speed of no less than 5 miles per hour below the speed limit, 90 percent of the time, over a consecutive 3-month period during the weekday peak travel periods.

SA 687. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, line 19, strike ''92'' and insert ''93.06''.

On page 53, strike lines 8 through 19 and insert the following:

''(B) for a State with a total population density of less than 30 persons per square mile, as reported in the decennial census conducted by the Federal Government in 2000, the greater of—

On page 55, line 17, strike ''115'' and insert ''100''.

On page 56, line 18, strike ''91'' and insert ''93.06''.

On page 56, line 19, strike ''92'' and insert ''93.06''.

Beginning on page 56, strike line 20 and all that follows through page 57, line 16.

On page 57, line 17, strike ''(e)'' and insert ''(d)''.

On page 58, line 7, strike ''(f)'' and insert ''(e)''.

On page 58, line 11, strike ''(g)'' and insert ''(f)''.

SA 688. Mr. ALLARD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 162, line 18, strike ''and''.

On page 162, line 22, strike the period and insert ''; and''.

On page 162, after line 22, insert the following:

(5) by adding at the end the following:

''(1) NOTIFICATION OF PENDING DISCRETIONARY GRANTS.—Not less than 3 full business days before announcement of award by the Secretary of any discretionary grant, letter of intent, of full funding grant agreement totaling $1,000,000 or more, the Secretary shall notify the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate and Committees on Transportation and Infrastructure and Appropriation of the House of Representatives.''.

SA 689. Mrs. CLINTON (for herself and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 352, strike lines 5 through 9 and insert the following:

ation Area; and

(ii) $46,931,446 to the State of Missouri for construction of a structure over the Mississippi River to connect the city of St. Louis, Missouri, to the State of Illinois; and

(iii) $46,931,446 to the State of New York for planning, design, and construction of the Peace Bridge connecting Buffalo, New York with Canada.

SA 690. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 17___. HOURS OF SERVICE FOR OPERATORS OF HELICOPTER SUPPORT VEHICLES ENGAGED IN ACTIVE FIRE SUPPRESSION ACTIVITIES.

Section 345 of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note; 109 Stat. 613) is amended—

(1) in subsection (a), by adding at the end the following:

''(6) OPERATORS OF HELICOPTER SUPPORT VEHICLES ENGAGED IN ACTIVE FIRE SUPPRESSION ACTIVITIES.—

''(A) INAPPLICABILITY OF FEDERAL REGULATIONS.—Regulations described in paragraph (1) shall not apply to a driver of a vehicle engaged in the support of a helicopter engaged in active fire suppression activities.

''(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or an entity consisting of 2 or more States shall not enact or enforce any law, rule, regulation, or standard that imposes a requirement that is similar to a requirement contained in the regulations described in paragraph (1) on a driver of a vehicle engaged in the support of a helicopter engaged in active fire suppression activities.'';

(2) in subsection (b), by striking ''Nothing'' and inserting ''Except as provided in subsection (a)(6), nothing''; and

(3) in the first sentence of subsection (c), by striking ''paragraph (2)'' and inserting ''an exemption under paragraph (2) or (6) of subsection (a)''.

SA 691. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. WAIVER FOR NOT-FOR-HIRE FARM TRUCKS.

If a State provides clear and convincing evidence, based on objective safety data, that not-for-hire farm trucks used exclusively for transporting agricultural products to markets within 150 miles of the farms from which such products originated do not pose a significant safety risk, the Secretary of Transportation may waive, for purposes of such vehicles, any provision of—

(1) part B of subtitle IV of title 49, United States Code;

(2) part B of subtitle VI of title 49, United States Code; or

(3) chapter III of title 49, Code of Federal Regulations.

SA 692. Mrs. CLINTON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 325, strike line 9 and all that follows through page 326, line 16 and insert the following:

(3) in subsection (d)—

On page 335, line 3, strike ''(5)'' and insert ''(4)''.

SA 693. Mr. DODD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. ONE-YEAR DELAY IN THE TRANSFER OF RESPONSIBILITY FOR MEDICARE APPEALS.

(a) DELAY IN THE TRANSFER.—

(1) IN GENERAL.—Section 931(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2398) is amended by striking ''Not earlier than July 1, 2005, and not later than October 1, 2005'' and inserting ''Not earlier than July 1, 2006, and not later than October 1, 2006''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the enactment of section 931(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2398).

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Commissioner of Social Security and the Secretary of Health and Human Services, in implementing the transition plan for the transfer of responsibility for medicare appeals pursuant to section 931(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2398), should ensure that—

(1) if a medicare beneficiary requests a hearing before an administrative law judge, such hearing shall be in-person unless such individual requests that the hearing be conducted using tele- or video conference technologies and the time frame for such a judge to decide an appeal is not different for hearings conducted in-person and hearings using tele- or video conference technologies;

(2) in providing for the geographic distribution of administrative law judges, there are a sufficient number of hearing sites to ensure adequate access to such judges by medicare beneficiaries and medicare providers; and

(3) in order to provide for the independence of administrative law judges from the Centers for Medicare & Medicaid Services and its contractors, such judges are bound only by applicable statutes, regulations, and rulings issued in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ''Administrative Procedures Act'') and are not required to give substantial deference to local coverage determinations, local medical review policies, or Centers for Medicare & Medicaid Services program guidance.

SA 694. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 353, strike lines 6 and 7 and insert the following:

Secretary determines that the State has inadequate needs to justify the expenditure.

''(C) PILOT PROGRAM.—Not less than 20 percent of the amount apportioned to the States of Colorado, _____, and _____, for each of fiscal years 2005 through 2009 shall be expended for off-system bridge pilot projects.'';

SA 695. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment add the following:

SEC.___. TRANSIT PASS TRANSPORTATION FRINGE BENEFITS.

(a) TRANSIT PASS TRANSPORTATION FRINGE BENEFITS STUDY.—

(1) STUDY.—The Secretary of Transportation shall conduct a study on tax-free transit benefits and ways to promote improved access to and increased usage of such benefits, at Federal agencies in the National Capital Region, including agencies not currently offering the benefit.

(2) CONTENT.—The study under this subsection shall include—

(A) an examination of how agencies offering the benefit make its availability known to their employees and the methods agencies use to deliver the benefit to employees, including examples of best practices; and

(B) an analysis of the impact of Federal employees' use of transit on traffic congestion and pollution in the National Capital Region.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the results of the study under this subsection.

(b) AUTHORITY TO USE GOVERNMENT VEHICLES TO TRANSPORT FEDERAL EMPLOYEES BETWEEN THEIR PLACE OF EMPLOYMENT AND MASS TRANSIT FACILITIES.—

(1) IN GENERAL.—Section 1344 of title 31, United States Code, is amended—

(A) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(B) by inserting after subsection (f) the following:

''(g)(1) A passenger carrier may be used to transport an officer or employee of a Federal agency between the officer's or employee's place of employment and a mass transit facility (whether or not publicly owned) in accordance with succeeding provisions of this subsection.

''(2) Notwithstanding section 1343, a Federal agency that provides transportation services under this subsection (including by passenger carrier) shall absorb the costs of such services using any funds available to such agency, whether by appropriation or otherwise.

''(3) In carrying out this subsection, a Federal agency shall—

''(A) to the maximum extent practicable, use alternative fuel vehicles to provide transportation services;

''(B) to the extent consistent with the purposes of this subsection, provide transportation services in a manner that does not result in additional gross income for Federal income tax purposes; and

''(C) coordinate with other Federal agencies to share, and otherwise avoid duplication of, transportation services provided under this subsection.

''(4) For purposes of any determination under chapter 81 of title 5, an individual shall not be considered to be in the 'performance of duty' by virtue of the fact that such individual is receiving transportation services under this subsection.

''(5)(A) The Administrator of General Services, after consultation with the National Capital Planning Commission and other appropriate agencies, shall prescribe any regulations necessary to carry out this subsection.

''(B) Transportation services under this subsection shall be subject neither to the last sentence of subsection (d)(3) nor to any regulations under the last sentence of subsection (e)(1).

''(6) In this subsection, the term 'passenger carrier' means a passenger motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned or leased by the United States Government or the government of the District of Columbia.''.

(2) FUNDS FOR MAINTENANCE, REPAIR, ETC.—Subsection (a) of section 1344 of title 31, United States Code, is amended by adding at the end the following:

''(3) For purposes of paragraph (1), the transportation of an individual between such individual's place of employment and a mass transit facility pursuant to subsection (g) is transportation for an official purpose.''.

(3) COORDINATION.—The authority to provide transportation services under section 1344(g) of title 31, United States Code (as amended by paragraph (1)) shall be in addition to any authority otherwise available to the agency involved.

SA 697. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 846, after line 6, insert the following:

(m) MIAMI METRORAIL.—The Secretary may credit funds provided by the Florida Department of Transportation for the extension of the Miami Metrorail System from Earlington Heights to the Miami Intermodal Center to satisfy the matching requirements of section 5309(h)(4) of title 49, United Stated Code, for the Miami North Corridor and Miami East-West Corridor projects.

SA 698. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 297, between lines 9 and 10, insert the following:

SEC. ___. ADVANCED TECHNOLOGY PROGRAM.

(a) REPEAL.—Section 28 of the Act of March 3, 1901 (15 U.S.C. 278n) is repealed.

(b) LIMITATION ON USE OF FEDERAL FUNDS.—Notwithstanding any other provision of law, no Federal funds may be expended to carry out the Advanced Technology Program after the date of enactment of this Act.

SEC. ___. APPLIED RESEARCH FOR FOSSIL FUELS.

Notwithstanding any other provision of law, the Secretary of Energy shall not carry out any program that conducts, or provides assistance for, applied research for fossil fuels.

SEC. ___. NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT.

The Neotropical Migratory Bird Conservation Act (16 U.S.C. 6101 et seq.) is repealed.

SEC. ___. UNITED STATES TRAVEL AND TOURISM PROGRAM.

Section 210 of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 78) is repealed and no funds may be expended for the United States Travel and Tourism Promotion Program on or after the date of enactment of this Act.

SEC. ___. INTER-AMERICAN FOUNDATION.

(a) REPEAL.—Section 401 of the Foreign Assistance Act of 1969 (22 U.S.C. 290f) is repealed.

(b) PROHIBITION ON EXPENDITURE OF FUNDS.—No funds may be expended for the Inter-American Foundation on or after the date enactment of this Act.

SA 699. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 297, between lines 9 and 10, insert the following:

SEC. 16 ___. INTER-AMERICAN FOUNDATION.

(a) REPEAL.—Section 401 of the Foreign Assistance Act of 1969 (22 U.S.C. 290f) is repealed.

(b) PROHIBITION ON EXPENDITURE OF FUNDS.—No funds may be expended for the Inter-American Foundation on or after the date enactment of this Act.

SA 700. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 297, between lines 9 and 10, insert the following:

SEC. ___. APPLIED RESEARCH FOR FOSSIL FUELS.

Notwithstanding any other provision of law, the Secretary of Energy shall not carry out any program that conducts, or provides assistance for, applied research for fossil fuels.

SA 701. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ADVANCED TECHNOLOGY PROGRAM.

(a) REPEAL.—Section 28 of the Act of March 3, 1901 (15 U.S.C. 278n) is repealed.

(b) LIMITATION ON USE OF FEDERAL FUNDS.—Notwithstanding any other provision of law, no Federal funds may be expended to carry out the Advanced Technology Program after the date of enactment of this Act.

SA 702. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 297, between lines 9 and 10, insert the following:

SEC. 16___. UNITED STATES TRAVEL AND TOURISM PROGRAM.

Section 210 of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 78) is repealed and no funds may be expended for the United States Travel and Tourism Promotion Program on or after the date of enactment of this Act.

SA 703. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which

was ordered to lie on the table; as follows:

On page 297, between lines 9 and 10, insert the following:

SEC. 16___. NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT.

The Neotropical Migratory Bird Conservation Act (16 U.S.C. 6101 et seq.) is repealed.

SA 704. Mr. VOINOVICH submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 566, strike lines 2 through 9 and insert the following:

''(C) blast furnace slag aggregate;

''(D) silica fume;

''(E) foundry sand; and

''(F) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

SA 705. Ms. SNOWE (herself and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 38, after line 24, add the following:

(b) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, amounts authorized to be appropriated under section 1101(5) that are made available to the State of Maine may be used to support, through September 30, 2009, the operation of passenger rail service between Boston, Massachusetts, and Portland, Maine.

SA 706. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 410, between lines 7 and 8, insert the following:

SEC. 18___. VEHICLE WEIGHT LIMITATIONS IN MAINE.

Section 127(a) of title 23, United States Code, is amended in the last sentence by striking ''respect to that portion'' and all that follows through ''New Hampshire State line,'' and inserting ''respect to Interstate Routes 95, 195, 295, and 395 in the State of Maine,''.

SA 707. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 582, after line 25, add the following:

SEC. 5204. VOLUMETRIC EXCISE TAX CREDIT FOR ALTERNATIVE FUELS.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Section 4081(a)(2)(A) (relating to rates of tax), as amended by section 5611 of this Act, is amended—

(A) by striking ''and'' at the end of clause (ii),

(B) by striking the period at the end of clause (iii), and

(C) by adding at the end the following new clauses:

''(iv) in the case of liquefied petroleum gas and P Series Fuels, 18.3 cents per gallon,

''(v) in the case of compressed natural gas and hydrogen, 18.3 cents per energy equivalent of a gallon of gasoline, and

''(vi) in the case of liquefied natural gas, any liquid fuel derived from coal (including peat), and liquid hydrocarbons derived from biomass (as defined in section 29(c)(3)), 24.3 cents per gallon.''.

(2) TREATMENT OF ALTERNATIVE FUEL AS TAXABLE FUEL.—

(A) IN GENERAL.—Section 4083(a)(1) (defining taxable fuel) is amended—

(i) by striking ''and'' at the end of subparagraph (B),

(ii) by striking the period at the end of subparagraph (C) and inserting '', and'', and

(iii) by adding at the end the following new subparagraph:

''(D) alternative fuel.''.

(B) DEFINITION.—Section 4083(a) is amended by adding at the end the following new paragraph:

''(4) ALTERNATIVE FUEL.—The term 'alternative fuel' means—

''(A) compressed or liquefied natural gas,

''(B) liquefied petroleum gas,

''(C) P Series Fuels (as defined by the Secretary of Energy under section 13211(2) of title 42, United States Code,

''(D) hydrogen,

''(E) any liquid fuel derived from coal (including peat), and

''(F) liquid hydrocarbons derived from biomass (as defined in section 29(c)(3)).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 4041(a), as amended by section 5101 of this Act, is amended by striking paragraphs (2) and (3) and inserting the following:

''(2) SPECIAL MOTOR FUELS.—

''(A) IN GENERAL.—There is hereby imposed a tax on any alternative fuel (other than gas oil or fuel oil)—

''(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

''(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such fuel under clause (i).

''(B) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this paragraph on the sale or use of any alternative fuel if tax was imposed on such alternative fuel under section 4081 and the tax thereon was not credited or refunded.

''(C) RATE OF TAX.—The rate of the tax imposed by this paragraph shall be the rate of tax specified in clause (iv), (v), or (vi) of section 4081(a)(2)(A) on the alternative fuel which is in effect at the time of such sale or use.

''(D) BUS USES.—No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2) (relating to school bus and intracity transportation).''.

(B) Section 4041(b)(2) is amended by striking ''2007'' both places it appears and inserting ''2005''.

(C) Section 4041, as amended by section 5101 of this Act, is amended by striking subsection (m).

(b) CREDIT FOR ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURES.—

(1) IN GENERAL.—Section 6426(a) (relating to allowance of credits) is amended by striking ''plus'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and by adding at the end the following new paragraphs:

''(3) the alternative fuel credit, plus

''(4) the alternative fuel mixture credit.''.

(2) ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURE CREDIT.—Section 6426 (relating to credit for alcohol fuel and biodiesel mixtures) is amended by redesignating subsections (d) and (e) as subsections (f) and (g) and by inserting after subsection (c) the following new subsection:

''(d) ALTERNATIVE FUEL CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a motor fuel in a highway vehicle.

''(2) ALTERNATIVE FUEL.—For purposes of this section, the term 'alternative fuel' has the meaning given such term by section 4083(a)(4), except such term does not include ethanol or methanol.

''(3) GASOLINE GALLON EQUIVALENT.—For purposes of this subsection, the term 'gasoline gallon equivalent' means, with respect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

''(4) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

''(e) ALTERNATIVE FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alternative fuel mixture credit is the product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer.

''(2) ALTERNATIVE FUEL MIXTURE.—For purposes of this section, the term 'alternative fuel mixture' means a mixture of alternative fuel and taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4083(a)(1)) which—

''(A) is sold by the taxpayer producing such mixture to any person for use as fuel in a highway vehicle, or

''(B) is used as a fuel in a highway vehicle by the taxpayer producing such mixture.

''(3) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.''.

(3) CONFORMING AMENDMENTS.—

(A) The section heading for section 6426 is amended by striking ''**alcohol fuel and biodiesel**'' and inserting ''**certain alternative fuel**''.

(B) The table of sections for subchapter B of chapter 65 is amended by striking ''alcohol fuel and biodiesel'' in the item relating to section 6426 and inserting ''certain alternative fuel''.

(C) Section 6427(a) is amended by striking ''paragraph (2) or (3) of section 4041(a) or section 4041(c)'' and inserting ''section 4041(a)(2) or 4041(c)''.

(D) Section 6427(e) is amended—

(i) by inserting ''or the alternative fuel mixture credit'' after ''biodiesel mixture credit'' in paragraph (1),

(ii) by inserting ''or alternative fuel'' after ''section 40A(d)(2))'' in paragraph (2),

(iii) by striking ''and'' at the end of paragraph (3)(A),

(iv) by striking the period at the end of paragraph (3)(B),

(v) by adding at the end of paragraph (3) the following new subparagraph:

''(C) any alternative fuel or alternative fuel mixture (as defined in section 6426 (d)(2)

or (e)(3)) sold or used after December 31, 2010.'', and

(vi) by striking ''OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES'' in the heading and inserting '', BIODIESEL, OR ALTERNATIVE FUEL''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any sale, use, or removal for any period after December 31, 2005.

SA 708. Mr. SANTORUM submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, strike lines 16 through 20 and insert the following:

authority has not lapsed or been used;

(10) section 105 of title 23, United States Code (but, for each of fiscal years 2005 through 2009, only in an amount equal to $639,000,000 per fiscal year); and

(11) section 1106 of this Act, to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation.

On page 60, between lines 14 and 15, insert the following:

SEC. 1106. USE OF EXCESS FUNDS AND FUNDS FOR INACTIVE PROJECTS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE FUNDS.—

(A) IN GENERAL.—The term ''eligible funds'' means excess funds or inactive funds for a specific transportation project or activity that were—

(i) allocated before fiscal year 1998; and

(ii) designated in a public law, or a report accompanying a public law, for allocation for the specific surface transportation project or activity.

(B) INCLUSION.—The term ''eligible funds'' includes funds described in subparagraph (A) that were allocated and designated for a demonstration project.

(2) EXCESS FUNDS.—The term ''excess funds'' means—

(A) funds obligated for a specific transportation project or activity that remain available for the project or activity after the project or activity has been completed or canceled; or

(B) an unobligated balance of funds allocated for a transportation project or activity that the State in which the project or activity was to be carried out certifies are no longer needed for the project or activity.

(3) INACTIVE FUNDS.—The term ''inactive funds'' means—

(A) an obligated balance of Federal funds for a transportation project or activity against which no expenditures have been charged during any 1-year period beginning after the date of obligation of the funds; and

(B) funds that are available to carry out a transportation project or activity in a State, but, as certified by the State, are unlikely to be advanced for the project or activity during the 1-year period beginning on the date of certification.

(b) AVAILABILITY FOR STP PURPOSES.—Eligible funds shall be—

(1) made available in accordance with this section to the State that originally received the funds; and

(2) available for obligation for any eligible purpose under section 133 of title 23, United States Code.

(c) RETENTION FOR ORIGINAL PURPOSE.—

(1) IN GENERAL.—The Secretary may determine that funds identified as inactive funds shall remain available for the purpose for which the funds were initially made available if the applicable State certifies that the funds are necessary for that initial purpose.

(2) REPORT.—A certification provided by a State under paragraph (1) shall include a report on the status of, and an estimated completion date for, the project that is the subject of the certification.

(d) AUTHORITY TO OBLIGATE.—Notwithstanding the original source or period of availability of eligible funds, the Secretary may, on the request by a State—

(1) obligate the funds for any eligible purpose under section 133 of title 23, United States Code; or

(2)(A) deobligate the funds; and

(B) reobligate the funds for any eligible purpose under that section.

(e) APPLICABILITY.—

(1) IN GENERAL.—Subject to paragraph (2), this section applies to all eligible funds.

(2) DISCRETIONARY ALLOCATIONS; SECTION 125 PROJECTS.—This section does not apply to funds that are—

(A) allocated at the discretion of the Secretary and for which the Secretary has the authority to withdraw the allocation for use on other projects; or

(B) made available to carry out projects under section 125 of title 23, United States Code.

(f) PERIOD OF AVAILABILITY; TITLE 23 REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding the original source or period of availability of eligible funds obligated, or deobligated and reobligated, under subsection (d), the eligible funds—

(A) shall remain available for obligation for a period of 3 fiscal years after the fiscal year in which this Act is enacted; and

(B) except as provided in paragraph (2), shall be subject to the requirements of title 23, United States Code, that apply to section 133 of that title, including provisions relating to cost-sharing.

(2) EXCEPTION.—With respect to eligible funds described in paragraph (1)—

(A) section 133(d) of title 23, United States Code, shall not apply; and

(B) the period of availability of the eligible funds shall be determined in accordance with this section.

(g) SENSE OF CONGRESS REGARDING USE OF ELIGIBLE FUNDS.—It is the sense of Congress that eligible funds made available under this Act or title 23, United States Code, should be available for obligation for transportation projects and activities in the same geographic region for which the eligible funds were initially made available.

SA 709. Ms. COLLINS (for herself and Ms. SNOWE) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. ____. DESIGNATION OF HIGH PRIORITY CORRIDOR IN NEW YORK, VERMONT, NEW HAMPSHIRE, AND MAINE.

Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031; 112 Stat. 191; 115 Stat. 871) is amended by adding at the end the following:

''(46) The East-West Corridor, from Watertown, New York, continuing northeast through the States of New York, Vermont, New Hampshire, and Maine, and terminating in Calais, Maine.''.

SA 710. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 14____. VEHICLE WEIGHT LIMITATIONS ON THE MAINE TURNPIKE.

The last sentence of section 127(a) of title 23, United States, is amended by striking ''and 495''.

SA 711. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title V, add the following:

Subtitle G—United States Tax Court Modernization

SEC. 5700. SHORT TITLE.

This title may be cited as the ''United States Tax Court Modernization Act''.

PART I—TAX COURT PROCEDURE

SEC. 5701. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date which is 60 days after the date of the enactment of this Act.

SEC. 5702. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking ''and'' at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

''(5) any proceeding under section 7436(c), and''.

(b) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking ''or (4)'' and inserting ''(4), or (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

SEC. 5703. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Section 6214(b) (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United

States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 5704. TAX COURT FILING FEE IN ALL CASES COMMENCED BY FILING PETITION.

(a) IN GENERAL.—Section 7451 (relating to fee for filing a Tax Court petition) is amended by striking all that follows ''petition'' and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 5705. AMENDMENTS TO APPOINT EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 7471 (relating to Tax Court employees) is amended to read as follows:

''(a) APPOINTMENT AND COMPENSATION.—

''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

''(2) LAW CLERKS AND SECRETARIES.—

''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

''(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee's credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

''(3) OTHER EMPLOYEES.—The Tax Court may appoint necessary employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such employees shall be subject to removal by the Tax Court.

''(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

''(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

''(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

''(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

''(B) promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

''(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

''(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

''(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

''(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

''(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

''(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

''(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

''(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non-temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

''(10) MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES; AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

''(A) include the principles set forth in section 2301(b) of title 5, United States Code;

''(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

''(C) in the case of any individual who would be a preference eligible in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act.

SEC. 5706. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end ''and to provide services to pro se taxpayers''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

PART II—TAX COURT PENSION AND COMPENSATION

SEC. 5711. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(h) ENTITLEMENT TO ANNUITY.—

''(1) IN GENERAL.—

''(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

''(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 20 percent of such average annual salary, divided by the number of such children.

''(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 40 percent of such average annual salary, divided by the number of such children.

''(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

''(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

''(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

''(3) TERMINATION OF ANNUITY.—

''(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

''(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

''(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

''(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

''(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

''(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as

prescribed in subsection (n) before the judge's death, reduced by

''(B) the amount of such salary deductions that were actually made before the date of the judge's death.''.

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.''.

(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(i) DETERMINATIONS BY CHIEF JUDGE.—

''(1) DEPENDENCY AND DISABILITY.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an assassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''.

(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(m) COMPUTATION OF ANNUITIES.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based upon the average annual salary received by such judge for judicial service.''.

(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''.

SEC. 5712. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

SEC. 5713. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court and to any retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 5714. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''.

SEC. 5715. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

SEC. 5716. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(k) THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph as provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

''(i) retires under subsection (b), or

''(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

''(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 5717. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under section 502(a)(5) of such Act shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 5718. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

''SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.''.

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

''(a) APPOINTMENT, TENURE, AND REMOVAL.—

''(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court shall proceed under such rules as may be promulgated by the Tax Court.

''(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for

incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.''.

(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking ''90'' and inserting ''92''.

(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

''(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

''(2) TREATMENT OF UNUSED LEAVE.—

''(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is deemed to have remained to the individual's credit.

''(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

''(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.''.

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''MAGISTRATE JUDGES OF THE TAX COURT''.

(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''.

(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

(6) Subsection (c) of section 7471 is amended—

(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 5719. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

''(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

''(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.''.

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

(1) by striking the subsection heading and inserting the following:

''(b) ELECTION.—

''(1) JUDGES.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

''(A) 6 months after the date of the enactment of this paragraph,

''(B) the date the judge takes office, or

''(C) the date the judge marries.''.

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting ''**and magistrate judges**'' after ''**judges**''.

(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting ''and magistrate judges'' after ''judges''.

(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

(A) by inserting ''or magistrate judge'' after ''judge'' each place it appears other than in the phrase ''chief judge'', and

(B) by inserting ''or magistrate judge's'' after ''judge's'' each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

(6) Section 7448(j)(1) is amended—

(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

(B) in the last sentence, by striking ''subsections (a)(6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

SEC. 5720. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

''(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

''(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

''(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

''(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

''(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as

such a magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

''(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

''(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

''(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

''(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

''(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

''(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

''(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

''(C) retired pay under section 7447, or

''(D) retired pay under section 7296 of title 38, United States Code.

''(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

''(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

''(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

''(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

''(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

''(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

''(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

''(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

''(i) PAYMENTS PURSUANT TO COURT ORDER.—

''(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service shall be paid (in whole or in part) by the chief judge of the Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

''(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

''(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

''(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

''(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court receives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

''(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

''(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

''(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

''(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

''(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

''(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

''(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

''(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

''(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

''(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

''(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

''(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

''(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

''(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the first month following the month in which the election is made.

''(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

''(n) LUMP-SUM PAYMENTS.—

''(1) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

''(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

''(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

''(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

''(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based

on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

''(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of such section 376 shall be deemed to mean 'magistrate judge of the Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

''(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

''(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

''(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

''(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity of a magistrate judge of the Tax Court shall be paid to that individual.

''(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

''(2) SPOUSES AND FORMER SPOUSES.—

''(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

''(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

''(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court approved property settlement agreement incident to such decree, if—

''(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

''(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

''(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

''(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

''(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

''(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

''(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

''(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

''(i) if the service covered thereby aggregates 1 year or less, or

''(ii) for the fractional part of a month in the total service.

''(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

''(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

''(3) UNFUNDED LIABILITY.—

''(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

''(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

''(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

''(ii) the balance in the Fund as of the date the unfunded liability is determined.

''(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 5721 of the United States Tax Court Modernization Act may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph as provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

''(i) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 5721 of the United States Tax Court Modernization Act,

''(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 5721 of the United States Tax Court Modernization Act, or

''(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 5721 of the United States Tax Court Modernization Act.

''(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 5721 of the United States Tax Court Modernization Act is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

''(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

''(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443A the following new item:

''Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

SEC. 5721. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this part, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of the annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code. Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 5722. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

"SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

''(1) the aggregate of such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

''(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

''(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

''(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

''Sec. 7443C. Recall of magistrate judges of the Tax Court.''.

SEC. 5723. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this part shall take effect on the date of the enactment of this Act.

SA 696. Mr. SARBANES submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 1830. ANNUAL REPORT ON ACQUISITIONS OF ARTICLES, MATERIALS, AND SUPPLIES MANUFACTURED OUTSIDE THE UNITED STATES.

Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(c) REPORTS.—

''(1) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the head of each Federal agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by the agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

''(2) CONTENT OF REPORT.—The report for a fiscal year under paragraph (1) shall separately indicate the following information:

''(A) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

''(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act.

''(C) A summary of—

''(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.''.

SA 712. Mr. NELSON of Nebraska submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 217, between lines 1 and 2, insert the following:

CHAPTER 1—GENERAL PROVISIONS

On page 297, between lines 9 and 10, insert the following:

CHAPTER 2—FUELS SECURITY

SEC. 1641. SHORT TITLE.

SHORT TITLE.—This chapter may be cited as the ''Fuels Security Act of 2005''.

Subchapter A—General Provisions

SEC. 1651. RENEWABLE CONTENT OF MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

(1) by redesignating subsection (o) as subsection (q); and

(2) by inserting after subsection (n) the following:

''(o) RENEWABLE FUEL PROGRAM.—

''(1) DEFINITIONS.—In this subsection:

''(A) ETHANOL.—

''(i) CELLULOSIC BIOMASS ETHANOL.—The term 'cellulosic biomass ethanol' means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

''(I) dedicated energy crops and trees;

''(II) wood and wood residues;

''(III) plants;

''(IV) grasses;

''(V) agricultural residues; and

''(VI) fibers.

''(ii) WASTE DERIVED ETHANOL.—The term 'waste derived ethanol' means ethanol derived from—

''(I) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

''(II) municipal solid waste.

''(B) RENEWABLE FUEL.—

''(i) IN GENERAL.—The term 'renewable fuel' means motor vehicle fuel that—

''(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

''(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

''(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

''(ii) INCLUSION.—The term 'renewable fuel' includes—

''(I) cellulosic biomass ethanol;

''(II) waste derived ethanol;

''(III) biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)); and

''(IV) any blending components derived from renewable fuel, except that only the renewable fuel portion of any such blending component shall be considered part of the applicable volume under the renewable fuel program established by this subsection.

''(C) SMALL REFINERY.—The term 'small refinery' means a refinery for which average aggregate daily crude oil throughput for the calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

''(2) RENEWABLE FUEL PROGRAM.—

''(A) IN GENERAL.—

''(i) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall promulgate regulations ensuring that motor vehicle fuel sold or dispensed to consumers in the contiguous United States, on an annual average basis, contains the applicable volume of renewable fuel specified in subparagraph (B).

''(ii) COMPLIANCE.—Regardless of the date of promulgation, the regulations shall contain compliance provisions for refiners, blenders, and importers, as appropriate, to ensure that the requirements of this subsection are met, but shall not restrict where renewable fuel can be used, or impose any per-gallon obligation for the use of renewable fuel.

''(iii) NO REGULATIONS.—If the Administrator does not promulgate the regulations, the applicable percentage referred to in paragraph (3), on a volume percentage of gasoline basis, shall be 3.2 in 2006.

''(B) APPLICABLE VOLUME.—

''(i) CALENDAR YEARS 2006 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2006 through 2012 shall be determined in accordance with the following table:

"Applicable volume of renewable fuel

Calendar year:	**(In billions of gallons)**
2006	4.0
2007	4.7
2008	5.4
2009	6.1
2010	6.8
2011	7.4
2012	8.0

''(ii) CALENDAR YEARS 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be determined by the Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years 2006 through 2012, including a review of—

''(I) the impact of the use of renewable fuels on the environment, air quality, energy security, job creation, and rural economic development; and

''(II) the expected annual rate of future production of renewable fuels, including cellulosic ethanol.

''(iii) LIMITATION.—An increase in the applicable volume for a calendar year under clause (ii) shall be not less than the product obtained by multiplying—

''(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce during the calendar year; and

''(I) the quotient obtained by dividing—

''(aa) 8,000,000,000; by

''(bb) the number of gallons of gasoline sold or introduced into commerce during calendar year 2012.

''(3) APPLICABLE PERCENTAGES.—

''(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2006 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate of the volumes of gasoline that will be sold or introduced into commerce in the United States during the following calendar year.

''(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

''(i) IN GENERAL.—Not later than November 30 of each of calendar years 2006 through 2011, based on the estimate provided under subparagraph (A), the Administrator shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements under paragraph (2) are met.

''(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

''(I) be applicable to refiners, blenders, and importers, as appropriate;

''(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce; and

''(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

''(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

''(i) to prevent the imposition of redundant obligations to any person specified in subparagraph (B)(ii)(I); and

''(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (11).

''(4) EQUIVALENCY.—For the purpose of paragraph (2), 1 gallon of either cellulosic biomass ethanol or waste derived ethanol shall be considered to be the equivalent of 2.5 gallons of renewable fuel.

''(5) CREDIT PROGRAM.—

''(A) REGULATIONS.—The regulations promulgated to carry out this subsection shall provide for—

''(i) the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

''(ii) the generation of an appropriate amount of credits for biodiesel fuel; and

''(iii) if a small refinery notifies the Administrator that the small refinery waives the exemption provided by this subsection, the generation of credits by the small refinery beginning in the year following the notification.

''(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

''(C) LIFE OF CREDITS.—A credit generated under this paragraph shall be valid to demonstrate compliance for the calendar year in which the credit was generated.

''(D) INABILITY TO PURCHASE SUFFICIENT CREDITS.—The regulations promulgated to carry out this subsection shall include provisions permitting any person that is unable to generate or purchase sufficient credits to meet the requirement under paragraph (2) to carry forward a renewables deficit if, for the calendar year following the year in which the renewables deficit is created—

''(i) the person achieves compliance with the renewables requirement under paragraph (2); and

''(ii) generates or purchases additional renewables credits to offset the renewables deficit of the preceding year.

''(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

''(A) STUDY.—For each of calendar years 2006 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuels blending to determine whether there are excessive seasonal variations in the use of renewable fuels.

''(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuels necessary to meet the requirements under paragraph (2) is used during each of the periods specified in subparagraph (D) of each subsequent calendar year.

''(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

''(i) less than 35 percent of the quantity of renewable fuels necessary to meet the requirements under paragraph (2) has been used during 1 of the periods specified in subparagraph (D) of the calendar year;

''(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

''(iii) promulgating regulations or other requirements to impose a 35 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

''(D) PERIODS.—The 2 periods referred to in this paragraph are—

''(i) April through September; and

''(ii) January through March and October through December.

''(E) EXCLUSIONS.—Renewable fuels blended or consumed in 2006 in a State that has received a waiver under section 209(b) shall not be included in the study under subparagraph (A).

''(7) WAIVERS.—

''(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements under paragraph (2), in whole or in part, on a petition by 1 or more States by reducing the national quantity of renewable fuel required under this subsection—

''(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

''(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply to meet the requirement.

''(B) PETITIONS FOR WAIVERS.—Not later than 90 days after the date on which a petition is received by the Administrator under subparagraph (A), the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove the petition.

''(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate on the date that is 1 year after the date on which the waiver was granted, but may be

renewed by the Administrator, after consultation with the Secretary of Agriculture and the Secretary of Energy.

''(8) SMALL REFINERIES.—

''(A) IN GENERAL.—Paragraph (2) shall not apply to small refineries until the first calendar year beginning more than 5 years after the first year set forth in the table in paragraph (2)(B)(i).

''(B) STUDY.—Not later than December 31, 2008, the Secretary of Energy shall complete for the Administrator a study to determine whether the requirements under paragraph (2) would impose a disproportionate economic hardship on small refineries.

''(C) SMALL REFINERIES AND ECONOMIC HARDSHIP.—For any small refinery that the Secretary of Energy determines would experience a disproportionate economic hardship, the Administrator shall extend the small refinery exemption for the small refinery for not less than 2 additional years.

''(D) ECONOMIC HARDSHIP.—

''(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption from the requirements under paragraph (2) for the reason of disproportionate economic hardship.

''(ii) EVALUATION.—In evaluating a hardship petition, the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study in addition to other economic factors.

''(iii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the receipt of the petition.

''(E) CREDIT PROGRAM.—Paragraph (6)(A)(iii) shall apply to each small refinery that waives an exemption under this paragraph.

''(F) OPT-IN FOR SMALL REFINERS.—A small refinery shall be subject to paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (C).''.

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''or (n)'' and inserting ''(n), or (o)'' each place it appears; and

(B) in the second sentence, by striking ''or (m)'' and inserting ''(m), or (o)''; and

(2) in the first sentence of paragraph (2), by striking ''and (n)'' and inserting ''(n), and (o)'' each place it appears.

SEC. 1652. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

Title III of the Energy Policy Act of 1992 is amended by striking section 306 (42 U.S.C. 13215) and inserting the following:

''SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

''(a) ETHANOL-BLENDED GASOLINE.—The head of each Federal agency shall ensure that, in areas in which ethanol-blended gasoline is reasonably available at a generally competitive price, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than non-ethanol-blended gasoline, for use in vehicles used by the agency that use gasoline.

''(b) BIODIESEL.—

''(1) DEFINITION OF BIODIESEL.—In this subsection, the term 'biodiesel' has the meaning given the term in section 312(f).

''(2) REQUIREMENT.—The head of each Federal agency shall ensure that the Federal agency purchases, for use in fueling fleet vehicles that use diesel fuel used by the Federal agency at the location at which fleet vehicles of the Federal agency are centrally fueled, in areas in which the biodiesel-blended diesel fuel described in subparagraphs (A) and (B) is available at a generally competitive price—

''(A) as of the date that is 5 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 2 percent biodiesel, rather than nonbiodiesel-blended diesel fuel; and

''(B) as of the date that is 10 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel.

''(3) REQUIREMENT OF FEDERAL LAW.—The provisions of this subsection shall not be considered a requirement of Federal law for the purposes of section 312.

''(c) EXEMPTION.—This section does not apply to fuel used in vehicles excluded from the definition of 'fleet' by subparagraphs (A) through (H) of section 301(9).''.

SEC. 1653. DATA COLLECTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

''(m)(1) In order to improve the ability to evaluate the effectiveness of the renewable fuels mandate of the United States, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses.

''(2) In conducting the survey, the Administrator shall collect information both on a national and regional basis, including—

''(A) information on—

''(i) the quantity of renewable fuels produced;

''(ii) the quantity of renewable fuels blended;

''(iii) the quantity of renewable fuels imported; and

''(iv) the quantity of renewable fuels demanded; and

''(B) market price data.''.

Subchapter B—Federal Reformulated Fuels

SEC. 1661. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended—

(A) in paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking ''(including the oxygen content requirement contained in subparagraph (B))'';

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(B) in paragraph (3)(A), by striking clause (v); and

(C) in paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) by redesignating clause (iii) as clause (ii).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on the date that is 1 year after the date of enactment of this Act, except that the amendments shall take effect upon that date of enactment in any State that has received a waiver under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)).

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended—

(1) by striking ''Within 1 year after the enactment of the Clean Air Act Amendments of 1990,'' and inserting the following:

''(A) IN GENERAL.—Not later than November 15, 1991,''; and

(2) by adding at the end the following:

''(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

''(i) DEFINITION OF PADD.—In this subparagraph, the term 'PADD' means a Petroleum Administration for Defense District.

''(ii) REGULATIONS REGARDING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph, the Administrator shall establish, for each refinery or importer, standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refinery or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refinery or importer during calendar years 2001 and 2002, determined on the basis of data collected by the Administrator with respect to the refinery or importer.

''(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

''(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refinery or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refinery or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refinery or importer during calendar years 2001 and 2002.

''(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refinery or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

''(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

''(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

''(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

''(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 2001 and 2002; and

''(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

''(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 2001 and 2002, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

''(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

''(bb) promulgate revisions to the regulations promulgated under clause (ii), to take

effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refinery or importer shall meet the standards applicable under clause (ii) not later than April 1 of the year following the report under this subclause and for subsequent years.

''(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2006, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).''.

(c) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations (or any successor regulations), to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(d) AUTHORITY OF ADMINISTRATOR.—Nothing in this section affects or prejudices any legal claim or action with respect to regulations promulgated by the Administrator of the Environmental Protection Agency before the date of enactment of this Act regarding—

(1) emissions of toxic air pollutants from motor vehicles; or

(2) the adjustment of standards applicable to a specific refinery or importer made under the prior regulations.

(e) DETERMINATION REGARDING A STATE PETITION.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended by inserting after paragraph (10) the following:

''(11) DETERMINATION REGARDING A STATE PETITION.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section, not later than 30 days after the date of enactment of this paragraph, the Administrator shall determine the adequacy of any petition received from a Governor of a State to exempt gasoline sold in that State from the requirements under paragraph (2)(B).

''(B) APPROVAL.—If a determination under subparagraph (A) is not made by the date that is 30 days after the date of enactment of this paragraph, the petition shall be considered to be approved.''.

SEC. 1662. PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS OF FUELS AND FUEL ADDITIVES.

Section 211(b) of the Clean Air Act (42 U.S.C. 7545(b)) is amended—

(1) in paragraph (2)—

(A) by striking ''may also'' and inserting ''shall, on a regular basis,''; and

(B) by striking subparagraph (A) and inserting the following:

''(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and''; and

(2) by adding at the end the following:

''(4) STUDY ON CERTAIN FUEL ADDITIVES AND BLENDSTOCKS.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall—

''(i) conduct a study on the effects on public health, air quality, and water resources of increased use of, and the feasibility of using as substitutes for methyl tertiary butyl ether in gasoline—

''(I) ethyl tertiary butyl ether;

''(II) tertiary amyl methyl ether;

''(III) di-isopropyl ether;

''(IV) tertiary butyl alcohol;

''(V) other ethers and heavy alcohols, as determined by the Administrator;

''(VI) ethanol;

''(VII) iso-octane; and

''(VIII) alkylates;

''(ii) conduct a study on the effects on public health, air quality, and water resources of the adjustment for ethanol-blended reformulated gasoline to the VOC performance requirements otherwise applicable under sections 211(k)(1) and 211(k)(3); and

''(iii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the results of these studies.

''(B) CONTRACTS FOR STUDY.—In carrying out this paragraph, the Administrator may enter into one or more contracts with nongovernmental entities including but not limited to National Energy Laboratories and institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).''.

SEC. 1663. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by inserting after subsection (o) (as added by section 1651(a)(2)) the following:

''(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

''(1) ANTI-BACKSLIDING ANALYSIS.—

''(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this subsection, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Fuels Security Act of 2005.

''(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment, but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

''(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2005.''.

SEC. 1664. ADDITIONAL OPT-IN AREAS UNDER REFORMULATED GASOLINE PROGRAM.

Section 211(k)(6) of the Clean Air Act (42 U.S.C. 7545(k)(6)) is amended—

(1) by striking ''(6) OPT-IN AREAS.—(A) Upon'' and inserting the following:

''(6) OPT-IN AREAS.—

''(A) CLASSIFIED AREAS.—

''(i) IN GENERAL.—Upon'';

(2) in subparagraph (B), by striking ''(B) If'' and inserting the following:

''(ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO PRODUCE REFORMULATED GASOLINE.—If'';

(3) in subparagraph (A)(ii) (as redesignated by paragraph (2))—

(A) in the first sentence, by striking ''subparagraph (A)'' and inserting ''clause (i)''; and

(B) in the second sentence, by striking ''this paragraph'' and inserting ''this subparagraph''; and

(4) by adding at the end the following:

''(B) OZONE TRANSPORT REGION.—

''(i) APPLICATION OF PROHIBITION.—

''(I) IN GENERAL.—In addition to the provisions of subparagraph (A), upon the application of the Governor of a State in the ozone transport region established by section 184(a), the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of title I) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

''(II) PUBLICATION OF APPLICATION.—As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

''(ii) PERIOD OF APPLICABILITY.—Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

''(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

''(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

''(iii) EXTENSION OF COMMENCEMENT DATE BASED ON INSUFFICIENT CAPACITY.—

''(I) IN GENERAL.—If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

''(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

''(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

''(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.''.

SEC. 1665. FEDERAL ENFORCEMENT OF STATE FUELS REQUIREMENTS.

Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended—

(1) by striking ''(C) A State'' and inserting the following:

''(C) AUTHORITY OF STATE TO CONTROL FUELS AND FUEL ADDITIVES FOR REASONS OF NECESSITY.—

''(i) IN GENERAL.—A State''; and

(2) by adding at the end the following:

''(ii) ENFORCEMENT BY THE ADMINISTRATOR.—In any case in which a State prescribes and enforces a control or prohibition under clause (i), the Administrator, at the request of the State, shall enforce the control or prohibition as if the control or prohibition had been adopted under the other provisions of this section.''.

SEC. 1666. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to the consumer;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals;

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refineries;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refineries, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while protecting and improving air quality at the national, regional, and local levels, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply; and

(F) the feasibility of providing incentives, and the need for the development of national standards necessary, to promote cleaner burning motor vehicle fuel.

(b) REPORT.—

(1) IN GENERAL.—Not later than June 1, 2006, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The report shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) REQUIRED CONSIDERATIONS.—The recommendations under subparagraph (A) shall take into account the need to provide advance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) CONSULTATION.—In developing the report, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall consult with—

(A) the Governors of the States;

(B) automobile manufacturers;

(C) motor vehicle fuel producers and distributors; and

(D) the public.

SEC. 1667. REVIEW OF FEDERAL PROCUREMENT INITIATIVES RELATING TO USE OF RECYCLED PRODUCTS AND FLEET AND TRANSPORTATION EFFICIENCY.

Not later than 180 days after the date of enactment of this Act, the Administrator of General Services shall submit to Congress a report that details efforts by each Federal agency to implement the procurement policies specified in Executive Order No. 13101 (63 Fed. Reg. 49643; relating to governmental use of recycled products) and Executive Order No. 13149 (65 Fed. Reg. 24607; relating to Federal fleet and transportation efficiency).

SEC. 1668. REPORT ON RENEWABLE MOTOR FUEL.

Not later than January 1, 2007, the Secretary of Energy and the Secretary of Agriculture shall jointly prepare and submit to Congress a report containing recommendations for achieving, by January 1, 2025, at least 25 percent renewable fuel content (calculated on an average annual basis) for all gasoline sold or introduced into commerce in the United States.

SA 713. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 269, strike lines 1 through 9 and insert the following:

(2) in paragraph (2)—

(A) by striking ''If a State'' and inserting the following:

''(A) IN GENERAL.—If a State'';

(B) by striking ''for any project in the State eligible under section 133.'' and inserting the following: ''for any project in the State that—

''(i) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

''(ii) is eligible under the surface transportation program under section 133.''; and

(C) by adding at the end the following:

''(B) OPERATING ASSISTANCE FOR PUBLIC TRANSIT PROVIDERS AND TRANSPORTATION MANAGEMENT ASSOCIATIONS.—In addition to other eligible uses, a State may use funds apportioned under section 104(b)(2)(D) to provide operating assistance for public transit providers or transportation management associations that serve a nonattainment or maintenance area, if a plan is in place for the project that annually reduces the amount of operating assistance required.''.

SA 714. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1281, between lines 2 and 3, insert the following:

SEC. 76___. FEDERAL SCHOOL BUS DRIVER QUALIFICATIONS.

The effective date of section 383.123 of volume 49, Code of Federal Regulations (as in effect on the date of enactment of this Act), shall be September 30, 2006.

SA 715. Mr. GREGG submitted an amendment intended to be proposed by him to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. 14___. SAFETY BELT USE RATES.

(a) DEFINITIONS.—In this section:

(1) PRIMARY SAFETY BELT LAW.—The term ''primary safety belt law'' means a law that authorizes a law enforcement officer to issue a citation for the failure of the driver of, or any passenger in, a motor vehicle to wear a safety belt as required by State law.

(2) SAFETY BELT USE RATE.—The term ''safety belt use rate'' means, as determined by the State for the most recent fiscal year or calendar year for which statistics are made available through any method, including observational surveys conducted by the State agency that has jurisdiction over highway safety, the ratio that—

(A) the number of drivers and front seat passengers of motor vehicles in the State that use safety belts; bears to

(B) the number of all drivers and front seat passengers of motor vehicles registered in the State.

(b) WITHHOLDING OF FUNDS.—

(1) IN GENERAL.—The Secretary shall withhold a percentage, as described in paragraph (2), of the funds apportioned to a State under paragraphs (1), (3), and (4) of section 104(b) or section 144 of title 23, United States Code, if, by October 1 of a given year, the State does not—

(A) have in effect a primary safety belt law; or

(B) demonstrate to the Secretary that the safety belt use rate in the State is at least 60 percent.

(2) PERCENTAGES.—The percentage referred to in paragraph (1) shall be—

(A) for fiscal year 2007, 2 percent; and

(B) for fiscal year 2008 and each fiscal year thereafter, 4 percent.

(c) RESTORATION.—If, by the date that is 3 years after the date on which funds are withheld from a State under subsection (b), the State has in effect a primary safety belt law or has demonstrated that the safety belt use rate in the State is at least 60 percent, the apportionment to the State under paragraphs (1), (3), and (4) of section 104(b) or section 144 of title 23, United States Code, shall be increased by the amount withheld under subsection (b).

(d) FAILURE TO ACT.—If, by the date that is 3 years after the date on which funds are withheld from a State under subsection (b), the State does not have in effect a primary safety belt law or has not demonstrated that the safety belt use rate in the State is at least 60 percent, the State shall forfeit the amount withheld under subsection (b).

SA 716. Mr. GREGG submitted an amendment intended to be proposed by him to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 14___. SAFETY BELT USE RATES.

(a) DEFINITIONS.—In this section:

(1) PRIMARY SAFETY BELT LAW.—The term ''primary safety belt law'' means a law that authorizes a law enforcement officer to issue a citation for the failure of the driver of, or any passenger in, a motor vehicle to wear a safety belt as required by State law.

(2) SAFETY BELT USE RATE.—The term ''safety belt use rate'' means, as determined by the State for the most recent fiscal year or calendar year for which statistics are made available through any method, including observational surveys conducted by the State agency that has jurisdiction over highway safety, the ratio that—

(A) the number of drivers and front seat passengers of motor vehicles in the State that use safety belts; bears to

(B) the number of all drivers and front seat passengers of motor vehicles registered in the State.

(b) WITHHOLDING OF FUNDS.—

(1) IN GENERAL.—The Secretary shall withhold a percentage, as described in paragraph (2), of the funds apportioned to a State under paragraphs (1), (3), and (4) of section 104(b) or

section 144 of title 23, United States Code, if, by October 1 of a given year, the State does not—

(A) have in effect a primary safety belt law; or

(B) demonstrate to the Secretary that the safety belt use rate in the State is at least 60 percent.

(2) PERCENTAGES.—The percentage referred to in paragraph (1) shall be—

(A) for fiscal year 2007, 2 percent; and

(B) for fiscal year 2008 and each fiscal year thereafter, 4 percent.

(c) RESTORATION.—If, by the date that is 3 years after the date on which funds are withheld from a State under subsection (b), the State has in effect a primary safety belt law or has demonstrated that the safety belt use rate in the State is at least 60 percent, the apportionment to the State under paragraphs (1), (3), and (4) of section 104(b) or section 144 of title 23, United States Code, shall be increased by the amount withheld under subsection (b).

(d) FAILURE TO ACT.—If, by the date that is 3 years after the date on which funds are withheld from a State under subsection (b), the State does not have in effect a primary safety belt law or has not demonstrated that the safety belt use rate in the State is at least 60 percent, the State shall forfeit the amount withheld under subsection (b).

SA 717. Mr. CLINTON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, line 10, insert ''and'' at the end.

On page 52, line 12, strike ''; and'' and insert a period.

On page 52, strike lines 13 through 15.

SA 718. Mr. STEVENS submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 944, after line 21 insert the following:

SEC. ___. FUNDING FOR FERRY BOATS.

Section 5309(i)(5) of title 49, United States Code, as amended by section 6011(j) of this Act, is amended to read as follows:

''(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A)—

''(A) $10,400,000 shall be available in fiscal year 2005 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals;

''(B) $15,000,000 shall be available in each of fiscal years 2006 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals; and

''(C) $5,000,000 shall be available in each of fiscal years 2006 through 2009 for payments to the Denali Commission under the terms of section 307(e) of the Denali Commission Act of 1998, as amended (42 U.S.C. 3121 note), for docks, waterfront development projects, and related transportation infrastructure.''.

SA 719. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

Section 105 of title 23, United States Code (as amended by section 1104(a)), is amended by redesignating subsection (g) as subsection (h) and inserting after subsection (f) the following:

''(g) FURTHER ADJUSTMENT.—The Secretary shall reduce any funds allocated to a State under this subsection by an amount equal to the amount of any discretionary allocation made to the State under an annual appropriations Act (including explanatory material) from a program funded by the Highway Trust Fund (other than the Mass Transit account), or any other direct appropriation from the Highway Trust Fund (other than the Mass Transit account) received by the State or an entity located in the State, during the preceding fiscal year.

SA 720. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

At the end of chapter 3 of subtitle E of title I, insert the following:

SEC. ___. SENSE OF CONGRESS RELATING TO PROJECT EARMARKS.

(a) FINDINGS.—Congress finds that—

(1) the House of Representatives adopted a rule in 1914 stating that it shall not be in order for any bill providing general legislation with respect to roads to contain any provision for any specific road;

(2) diverting funds to low-priority earmarks diminishes the ability of States and local communities to establish priorities and address mobility problems;

(3) the Government Accountability Office has reported that demonstration projects reviewed were not considered by State and regional transportation officials as critical to their transportation needs, and more than half of the projects reviewed were not included in State and local transportation plans;

(4) some earmarks have nothing to do with transportation and may worsen congestion by diverting scarce resources from higher priorities;

(5) the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) contained 10 earmarks at a cost of $385,925,000;

(6) the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 132) contained 157 projects at a cost of $1,416,000,000;

(7) the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1914) contained 538 projects at a cost of $6,082,873,000;

(8) the Transportation Equity Act for the 21st Century (112 Stat. 107) contained 1,851 projects at a cost of $9,359,850,000;

(9) annual transportation appropriations Acts demonstrate the same trend in increasing earmarking of projects;

(10) the funding earmarked for many projects does not cover the full cost of the project and requires State and local communities to cover the unfunded costs; and

(11) funding of earmarked projects can have a dramatic effect on the rate of return that a State receives on its contributions to the Highway Trust Fund.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 should not include project earmarks;

(2) if earmarked projects are included, the projects should be included within the funding that a State would otherwise receive so as not to penalize other States; and

(3) any earmarked projects should be included in the funding equity provisions of the next surface transportation Act so that the projects do not adversely affect the rate of return that a State receives from its contributions to the Highway Trust Fund.

SA 721. Mr. LOTT submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 1091, line 17, strike ''$1,000,000,000'' and insert ''$1,000,000''.

SA 722. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 630, line 8, insert ''and shall immediately propose appropriate exemptions for classes of vehicles whose nonpropulsive fuel use exceeds 50 percent,'' after ''taxes,''.

On page 631, line 7, insert '', except that the Secretary shall report and take action under subsection (a)(1) not later than July 1, 2006'' before the period at the end.

SA 723. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 276, line 9, insert '' (including intercity passenger rail when used for the purpose of a daily commute)'' after ''transit ridership''.

SA 724. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 52, strike line 16 and all that follows through page 58, line 11, and insert the following:

''(b) STATE PERCENTAGE.—

''(1) IN GENERAL.—The percentage referred to in subsection (a) for each State shall be—

''(A) 93.06 percent of the quotient obtained by dividing—

''(i) the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available; by

''(ii) the estimated tax payments attributable to highway users in all States paid

into the Highway Trust Fund (other than the Mass Transit Account) for the fiscal year; or

''(B) for a State with a total population density of less than 30 persons per square mile, as reported in the decennial census conducted by the Federal Government in 2000, the greater of—

''(i) the percentage under paragraph (1); or

''(ii) the average percentage of the State's share of total apportionments for the period of fiscal years 1998 through 2003 for the programs specified in paragraph (2).

''(2) SPECIFIC PROGRAMS.—The programs referred to in paragraph (1)(B)(ii) are (as in effect on the day before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005)—

''(A) the Interstate maintenance program under section 119;

''(B) the national highway system program under section 103;

''(C) the bridge program under section 144;

''(D) the surface transportation program under section 133;

''(E) the recreational trails program under section 206;

''(F) the high priority projects program under section 117;

''(G) the minimum guarantee provided under this section;

''(H) revenue aligned budget authority amounts provided under section 110;

''(I) the congestion mitigation and air quality improvement program under section 149;

''(J) the Appalachian development highway system program under subtitle IV of title 40; and

''(K) metropolitan planning programs under section 104(f).

''(c) SPECIAL RULES.—

''(1) MINIMUM COMBINED ALLOCATION.—For each fiscal year, before making the allocations under subsection (a)(1), the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a combined total of amounts allocated under subsection (a)(1), apportionments for the programs specified in subsection (a)(2), and amounts allocated under this subsection, that is less than 100 percent of the average for fiscal years 1998 through 2003 of the annual apportionments for the State for all programs specified in subsection (b)(2).

''(2) NO NEGATIVE ADJUSTMENT.—Notwithstanding subsection (d), no negative adjustment shall be made under subsection (a)(1) to the apportionment of any State.

''(3) MINIMUM SHARE OF TAX PAYMENTS.—

''(A) IN GENERAL.—Notwithstanding subsection (d), for each fiscal year, the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a percentage of apportionments for the fiscal year for the programs specified in subsection (a)(2) that is less than the percentage specified in subparagraph (B) of the percentage share of the State of estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available.

''(B) PERCENTAGES.—The percentages referred to in subparagraph (A) are—

''(i) for fiscal year 2005, 90.5 percent; and

''(ii) for each of fiscal years 2006 through 2009, 93.06 percent.

''(d) PROGRAMMATIC DISTRIBUTION OF FUNDS.—The Secretary shall apportion the amounts made available under this section so that the amount apportioned to each State under this section for each program referred to in subparagraphs (A) through (G) of subsection (a)(2) is equal to the amount determined by multiplying the amount to be apportioned under this section by the proportion that—

''(1) the amount of funds apportioned to each State for each program referred to in subparagraphs (A) through (G) of subsection (a)(2) for a fiscal year; bears to

''(2) the total amount of funds apportioned to each State for all such programs for the fiscal year.

''(e) METRO PLANNING SET ASIDE.—Notwithstanding section 104(f), no set aside provided for under that section shall apply to funds allocated under this section.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There

SA 725. Mr. SANTORUM (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 410, between lines 7 and 8, insert the following:

SEC. 1830. PRIORITY PROJECTS.

Section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 306) is amended in item 1349 of the table contained in that section by inserting '', and improvements to streets and roads providing access to,'' after ''along''.

SA 726. Mr. INHOFE (for himself, Mr. BAYH, Mr. WARNER, Mr. JEFFORDS, Mr. LUGAR, Mrs. CLINTON, Mr. CHAFEE, Mr. OBAMA, Ms. LANDRIEU, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 297, between lines 9 and 10, insert the following:

SEC. 16___. CLEAN SCHOOL BUS PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ALTERNATIVE FUEL.—The term ''alternative fuel'' means—

(A) liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, or propane;

(B) methanol or ethanol at no less than 85 percent by volume; or

(C) biodiesel conforming with standards published by the American Society for Testing and Materials as of the date of enactment of this Act.

(3) CLEAN SCHOOL BUS.—The term ''clean school bus'' means a school bus with a gross vehicle weight of greater than 14,000 pounds that—

(A) is powered by a heavy duty engine; and

(B) is operated solely on an alternative fuel or ultra-low sulfur diesel fuel.

(4) ELIGIBLE RECIPIENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''eligible recipient'' means—

(i) 1 or more local or State governmental entities responsible for—

(I) providing school bus service to 1 or more public school systems; or

(II) the purchase of school buses;

(ii) 1 or more contracting entities that provide school bus service to 1 or more public school systems; or

(iii) a nonprofit school transportation association.

(B) SPECIAL REQUIREMENTS.—In the case of eligible recipients identified under clauses (ii) and (iii), the Administrator shall establish timely and appropriate requirements for notice and may establish timely and appropriate requirements for approval by the public school systems that would be served by buses purchased or retrofit using grant funds made available under this section.

(5) RETROFIT TECHNOLOGY.—The term ''retrofit technology'' means a particulate filter or other emissions control equipment that is verified or certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(7) ULTRA-LOW SULFUR DIESEL FUEL.—The term ''ultra-low sulfur diesel fuel'' means diesel fuel that contains sulfur at not more than 15 parts per million.

(b) PROGRAM FOR RETROFIT OR REPLACEMENT OF CERTAIN EXISTING SCHOOL BUSES WITH CLEAN SCHOOL BUSES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible recipients for the replacement or retrofit (including repowering, aftertreatment, and remanufactured engines) of certain existing school buses.

(B) BALANCING.—In awarding grants under this section, the Administrator shall, to the maximum extent practicable, achieve an appropriate balance between awarding grants—

(i) to replace school buses; and

(ii) to install retrofit technologies.

(2) PRIORITY OF GRANT APPLICATIONS.—

(A) REPLACEMENT.—In the case of grant applications to replace school buses, the Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(B) RETROFITTING.—In the case of grant applications to retrofit school buses, the Administrator shall give priority to applicants that propose to retrofit school buses manufactured in or after model year 1991.

(3) USE OF SCHOOL BUS FLEET.—

(A) IN GENERAL.—All school buses acquired or retrofitted with funds provided under this section shall be operated as part of the school bus fleet for which the grant was made for not less than 5 years.

(B) MAINTENANCE, OPERATION, AND FUELING.—New school buses and retrofit technology shall be maintained, operated, and fueled according to manufacturer recommendations or State requirements.

(4) RETROFIT GRANTS.—The Administrator may award grants for up to 100 percent of the retrofit technologies and installation costs.

(5) REPLACEMENT GRANTS.—

(A) ELIGIBILITY FOR 50% GRANTS.—The Administrator may award grants for replacement of school buses in the amount of up to ½ of the acquisition costs (including fueling infrastructure) for —

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 1.8 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007, 2008, or 2009 that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter to be applicable for school buses manufactured in model year 2010.

(B) ELIGIBILITY FOR 25% GRANTS.—The Administrator may award grants for replacement of school buses in the amount of up to ¼ of the acquisition costs (including fueling infrastructure) for —

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 2.5 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007 or thereafter that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter from school buses manufactured in that model year.

(6) ULTRA-LOW SULFUR DIESEL FUEL.—

(A) IN GENERAL.—In the case of a grant recipient receiving a grant for the acquisition of ultra-low sulfur diesel fuel school buses with engines manufactured in model year 2005 or 2006, the grant recipient shall provide, to the satisfaction of the Administrator—

(i) documentation that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant; and

(ii) a commitment by the applicant to use that fuel in carrying out the purposes of the grant.

(7) DEPLOYMENT AND DISTRIBUTION.—The Administrator shall, to the maximum extent practicable—

(A) achieve nationwide deployment of clean school buses through the program under this section; and

(B) ensure a broad geographic distribution of grant awards, with no State receiving more than 10 percent of the grant funding made available under this section during a fiscal year.

(8) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than January 31 of each year, the Administrator shall submit to Congress a report that—

(i) evaluates the implementation of this section; and

(ii) describes—

(I) the total number of grant applications received;

(II) the number and types of alternative fuel school buses, ultra-low sulfur diesel fuel school buses, and retrofitted buses requested in grant applications;

(III) grants awarded and the criteria used to select the grant recipients;

(IV) certified engine emission levels of all buses purchased or retrofitted under this section;

(V) an evaluation of the in-use emission level of buses purchased or retrofitted under this section; and

(VI) any other information the Administrator considers appropriate.

(c) EDUCATION.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall develop an education outreach program to promote and explain the grant program.

(2) COORDINATION WITH STAKEHOLDERS.—The outreach program shall be designed and conducted in conjunction with national school bus transportation associations and other stakeholders.

(3) COMPONENTS.—The outreach program shall—

(A) inform potential grant recipients on the process of applying for grants;

(B) describe the available technologies and the benefits of the technologies;

(C) explain the benefits of participating in the grant program; and

(D) include, as appropriate, information from the annual report required under subsection (b)(8).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $55,000,000 for each of fiscal years 2006 and 2007; and

(2) such sums as are necessary for each of fiscal years 2008, 2009, and 2010.

SA 727. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 400, strike line 22 and all that follows through page 403, line 4 and insert the following:

SEC. 1821. DISADVANTAGED BUSINESS ENTERPRISES.

(a) GENERAL RULE.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, II, and VI of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Small Business Administration.

(2) SMALL BUSINESS CONCERN.—The term ''small business concern'' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(3) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ''socially and economically disadvantaged individuals'' has the meaning given that term under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant regulations promulgated under that section, except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section.

(c) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.—Each State, in consultation with the Administrator, shall annually survey or otherwise compile a list of the small business concerns referred to in subsection (a) and the location of such concerns in the State, and shall notify the Secretary in writing of the percentage of such small business concerns which are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are women and are otherwise socially and economically disadvantaged individuals.

(d) UNIFORM LIST COMPILATION.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary, shall establish minimum uniform procedures to be used by State governments in compiling the list required by subsection (c).

(2) UNIFORM PROCEDURES.—Minimum uniform procedures required under paragraph (1) shall include on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, type of work preferred, and any other criteria recommended by the Administrator.

(3) REGISTRATION REQUIRED.—No small business concern may be included on the list required by subsection (c) unless it first registers in the Central Contractor Registration database.

(e) COMPLIANCE WITH COURT ORDERS.—Nothing in this section limits the eligibility of an entity or person to receive funds made available under titles I, III, and V of this Act, if the entity or person is prevented, in whole or in part, from complying with subsection (a) because a Federal court issues a final order in which the court finds that the requirement of subsection (a), or the program established under subsection (a), is unconstitutional.

SA 728. Mrs. CLINTON (for herself and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 605 propoosed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, strike lines 10 through 15 and insert the following:

''under section 150; and

(M) the rail-highway grade crossing program under section 130.''

SA 729. Mr. VOINOVICH (for himself and Mr. DEWINE) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1069, after line 10, add the following:

SEC. 7155. SCHOOL BUS ENDORSEMENT KNOWLEDGE TEST REQUIREMENT.

The Secretary shall recognize any driver who passes a test approved by the Federal Motor Carrier Safety Administration as meeting the knowledge test requirement for a school bus endorsement under section 383.123 of title 49, Code of Federal Regulations.

SA 730. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. COMMUTER RAIL SERVICE.

(a) IN GENERAL.—The Federal Transit Administration shall approve final engineering and construction for projects, which were provided funding under section 3030(c)(1)(A)(xliv) of the Federal Transit Act of 1998, and section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note), in the absence of an access agreement with the owner of the railroad right of way.

(b) TIMELY RESOLUTION OF ISSUES.—The Secretary shall timely resolve any issues delaying the completion of the project authorized under section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note) and the project authorized under section 3030(c)(1)(A)(xliv) of the Federal Transit Act of 1998.

SA 731. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment

intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. COMMUTER RAIL SERVICE.

(a) IN GENERAL.—The Massachusetts Bay Transportation Authority is authorized to operate commuter rail service south of milepost 185 of the Northeast Corridor under the terms an dconditions established under section 24904(a)(6) of title 49, United States Code.

(b) TIMELY RESOLUTION OF ISSUES.—The Secretary shall timely resolve any issues delaying the completion of the project authorized under section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note).

SA 732. Mr. DODD submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 143, after the matter following line 25, add the following:

SEC. 1411. TEEN DRIVING SAFETY.

(a) SHORT TITLE.—This section may be cited as the ''Safe Teen and Novice Driver Uniform Protection Act of 2005'' or the ''STANDUP Act''.

(b) FINDINGS.—Congress finds the following:

(1) The National Transportation Safety Board has reported that—

(A) in 2002, teen drivers, which constituted only 6.4 percent of all drivers, were involved in 14.3 percent of all fatal motor vehicle crashes;

(B) motor vehicle crashes are the leading cause of death for Americans between 15 and 20 years of age;

(C) between 1994 and 2003, almost 64,000 Americans between 15 and 20 years of age died in motor vehicle crashes, an average of 122 per week; and

(D) in 2003—

(i) 3,657 American drivers between 15 and 20 years of age were killed in motor vehicle crashes;

(ii) 300,000 Americans between 15 and 20 years of age were injured in motor vehicle crashes; and

(iii) 7,884 American drivers between 15 and 20 years of age were involved in fatal crashes, resulting in 9,088 total fatalities, a 5 percent increase since 1993.

(2) Though only 20 percent of driving by young drivers occurs at night, over 50 percent of the motor vehicle crash fatalities involving young drivers occur at night.

(3) The National Highway Traffic Safety Administration has reported that—

(A) 6,300,000 motor vehicle crashes claimed the lives of nearly 43,000 Americans in 2003 and injured almost 3,000,000 more Americans;

(B) teen drivers between 16 and 20 years of age have a fatality rate that is 4 times the rate for drivers between 25 and 70 years of age; and

(C) drivers who are 16 years of age have a motor vehicle crash rate that is almost ten times the crash rate for drivers aged between 30 and 60 years of age.

(4) According to the Insurance Institute for Highway Safety, the chance of a crash by a 16- or 17-year-old driver is doubled if there are 2 peers in the vehicle and quadrupled with 3 or more peers in the vehicle.

(5) In 1997, the first full year of its graduated driver licensing system, Florida experienced a 9 percent reduction in fatal and injurious crashes among young drivers between the ages of 15 and 18, compared with 1995, according to the Insurance Institute for Highway Safety.

(6) The Journal of the American Medical Association reports that crashes involving 16-year-old drivers decreased between 1995 and 1999 by 25 percent in Michigan and 27 percent in North Carolina. Comprehensive graduated driver licensing systems were implemented in 1997 in these States.

(7) In California, according to the Automobile Club of Southern California, teenage passenger deaths and injuries resulting from crashes involving 16-year-old drivers declined by 40 percent from 1998 to 2000, the first 3 years of California's graduated driver licensing program. The number of at-fault collisions involving 16-year-old drivers decreased by 24 percent during the same period.

(8) The National Transportation Safety Board reports that 39 States and the District of Columbia have implemented 3-stage graduated driver licensing systems. Many States have not yet implemented these and other basic safety features of graduated driver licensing laws to protect the lives of teenage and novice drivers.

(9) A 2001 Harris Poll indicates that—

(A) 95 percent of Americans support a requirement of 30 to 50 hours of practice driving with an adult;

(B) 92 percent of Americans support a 6-month learner's permit period; and

(C) 74 percent of Americans support limiting the number of teen passengers in a car with a teen driver and supervised driving during high-risk driving periods, such as night.

(c) STATE GRADUATED DRIVER LICENSING LAWS.—

(1) MINIMUM REQUIREMENTS.—A State is in compliance with this subsection if the State has a graduated driver licensing law that includes, for novice drivers under the age of 21—

(A) a 3-stage licensing process, including a learner's permit stage and an intermediate stage before granting an unrestricted driver's license;

(B) a prohibition of meaningful duration on nighttime driving during the learner's permit and intermediate stages;

(C) a prohibition, during the intermediate stage, from operating a motor vehicle with more than 1 non-familial passenger under the age of 21 if there is no licensed driver 21 years of age or older present in the motor vehicle; and

(D) any other requirement that the Secretary of Transportation (referred to in this section as the ''Secretary'') may require, including—

(i) a learner's permit stage of at least 6 months;

(ii) an intermediate stage of at least 6 months;

(iii) for novice drivers in the learner's permit stage—

(I) a requirement of at least 30 hours of behind-the-wheel training with a licensed driver who is over 21 years of age; and

(II) a requirement that any such driver be accompanied and supervised by a licensed driver 21 years of age or older at all times when such driver is operating a motor vehicle; and

(iv) a requirement that the grant of full licensure be automatically delayed, in addition to any other penalties imposed by State law for any individual who, while holding a provisional license, convicted of an offense, such as driving while intoxicated, misrepresentation of their true age, reckless driving, unbelted driving, speeding, or other violations, as determined by the Secretary.

(2) RULEMAKING.—After public notice and comment rulemaking the Secretary shall issue regulations necessary to implement this subsection.

(d) INCENTIVE GRANTS.—

(1) IN GENERAL.—For each of the first 3 fiscal years following the date of enactment of this Act, the Secretary shall award a grant to any State in compliance with subsection (c)(1) on or before the first day of that fiscal year that submits an application under paragraph (2).

(2) APPLICATION.—Any State desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a certification by the governor of the State that the State is in compliance with subsection (c)(1).

(3) GRANTS.—For each fiscal year described in paragraph (1), amounts appropriated to carry out this subsection shall be apportioned to each State in compliance with subsection (c)(1) in an amount determined by multiplying—

(A) the amount appropriated to carry out this subsection for such fiscal year; by

(B) the ratio that the amount of funds apportioned to each such State for such fiscal year under section 402 of title 23, United States Code, bears to the total amount of funds apportioned to all such States for such fiscal year under such section 402.

(4) USE OF FUNDS.—Amounts received under a grant under this subsection shall be used for—

(A) enforcement and providing training regarding the State graduated driver licensing law to law enforcement personnel and other relevant State agency personnel;

(B) publishing relevant educational materials that pertain directly or indirectly to the State graduated driver licensing law; and

(C) other administrative activities that the Secretary considers relevant to the State graduated driver licensing law.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $25,000,000 out of the Highway Trust Fund (other than the Mass Transit Account) for each of the fiscal years 2005 through 2009 to carry out this subsection.

(e) TRANSFERRING OF FUNDS FOR NON-COMPLIANCE.—

(1) FISCAL YEAR 2010.—The Secretary shall transfer 1.5 percent of the amount otherwise required to be apportioned to any State for fiscal year 2010 under each of the paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, to the apportionment of the State under section 402 of such title for the enforcement of teen drinking and driving laws, including seat belt enforcement, underage drinking, and other teen driving safety laws, if that State is not in compliance with subsection (c)(1) on October 1, 2009.

(2) FISCAL YEAR 2011.—The Secretary shall transfer 2 percent of the amount otherwise required to be apportioned to any State for fiscal year 2011 under each of the paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, to the apportionment of the State under section 402 of such title for the enforcement of teen drinking and driving laws, including seat belt enforcement, underage drinking, and other teen driving safety laws, if that State is not in compliance with subsection (c)(1) on October 1, 2010.

(3) FISCAL YEAR 2012 AND THEREAFTER.—The Secretary shall transfer 3 percent of the amount otherwise required to be apportioned to any State for each fiscal year beginning

with fiscal year 2012 under each of the paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, to the apportionment of the State under section 402 of such title for the enforcement of teen drinking and driving laws, including seat belt enforcement, underage drinking, and other teen driving safety laws, if that State is not in compliance with subsection (c)(1) on the first day of such fiscal year.

SA 733. Mr. ALEXANDER (for himself and Mr. GRAHAM, Mr. BURR, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 35, strike lines 18 through 21, and insert the following:

(i) $310,000,000 for fiscal year 2005; and

(ii) $320,000,000 for each of fiscal years 2006 through 2009.

The amounts provided for under section 2001(a)(1)(A) (relating to surface transportation research) shall be reduced by $19,638,742 for fiscal year 2005, and $19,638,742 for each of fiscal years 2006 through 2009.

SA 734. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 297, between lines 9 and 10, insert the following:

SEC. 16___. REPORT ON USE OF FUNDS TO REDUCE OIL AND FUEL CONSUMPTION.

(a) IN GENERAL.—Not later than December 1, 2005, and annually thereafter, each State and metropolitan planning organization that serves a population of 200,000 or more shall make available to the public, using the Internet and other means commonly used to inform the public under this Act, a report that describes where the documentation of materials assembled in the project development process anticipated fuel and/or cost saving the ways in which the planned use of Federal funds made available under this Act to the State or metropolitan planning organization for the preceding fiscal year will—

(1) reduce the demand for gasoline and diesel fuels; and

(2) lower household transportation expenditures.

(b) INFORMATION, DATA, AND TECHNICAL ASSISTANCE.—The Secretary, with assistance from the Bureau of Transportation Statistics and other Federal agencies, shall provide to States and metropolitan planning organizations any information, data, and technical assistance that would assist the States and metropolitan planning organizations in preparing the annual reports under subsection (a).

(c) INTERIM REPORT.—Not later than September 30, 2007, the Secretary shall submit to Congress a report that describes any cumulative savings in fuel, the most effective fuel savings measures, and any other benefits identified by the States and metropolitan planning organizations, from the use of Federal funds made available under this Act during each of fiscal years 2006 and 2007.

SA 735. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 635, between lines 3 and 4, insert the following:

SEC. ___. EXTENSION AND MODIFICATION OF RENEWABLE ENERGY CREDIT.

(a) EXTENSION.—Section 45(d) (relating to qualified facilities) is amended by striking ''January 1, 2006'' each place it appears and inserting ''January 1, 2009''

(b) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

(1) IN GENERAL.—Section 45(e) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(10) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act.

''(D) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(E) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

SA 736. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 635, between lines 3 and 4, insert the following:

SEC. ___. EXTENSION AND MODIFICATION OF RENEWABLE ENERGY CREDIT.

(a) EXTENSION.—Section 45(d) (relating to qualified facilities) is amended by striking ''January 1, 2006'' each place it appears and inserting ''January 1, 2009''

(b) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

(1) IN GENERAL.—Section 45(e) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(10) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described

in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) CREDIT NOT INCOME.—Any transfer under subparagraph (B) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(D) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

SA 737. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 38, line 8, strike ''$9,386,289'' and insert ''$8,386,289''.

On page 327, line 18, strike ''under section 204''.

On page 417, line 24, strike ''209'' and insert ''2009''.

On page 418, line 13, strike ''$2,000,000'' and insert ''$3,000,000''.

On page 558, line 17, insert ''and Boating'' before ''Trust''.

On page 558, line 23, strike ''2004'' and insert ''2005''.

On page 633, line 15, strike ''by all States''.

On page 652, line 23, strike ''Section'' and insert ''(a) IN GENERAL.—Section''.

On page 653, between lines 8 and 9, insert the following:

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

On page 807, after line 16, insert the following:

(h) CONTRACTED PARATRANSIT PILOT.—

(1) IN GENERAL.—Notwithstanding section 5302(a)(1)(I) of title 49, United States Code, for fiscal years 2005 through 2009, a recipient of assistance under section 5307 of title 49, United States Code, in an urbanized area with a population of 558,329 according to the 2000 decennial census of population may use not more than 20 percent of such recipient's annual formula apportionment under section 5307 of title 49, United States Code, for the provision of nonfixed route paratransit services in accordance with section 223 of the Americans with Disabilities Act (42 U.S.C. 12143), but only if the grant recipient is in compliance with applicable requirements of that Act, including both fixed route and demand responsive service and the service is acquired by contract.

(2) REPORT.—Not later than January 1, 2009, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report on the implementation of this section and any recommendations of the Secretary regarding the application of this section.

On page 846, after line 6, insert the following:

(m) MIAMI METRORAIL.—The Secretary may credit funds provided by the Florida Department of Transportation for the extension of the Miami Metrorail System from Earlington Heights to the Miami Intermodal Center to satisfy the matching requirements of section 5309(h)(4) of title 49, United Stated Code, for the Miami North Corridor and Miami East-West Corridor projects.

On page 872, strike line 24, and insert the following:

tives.

''(e) STUDY OF METHODS TO IMPROVE ACCESSIBILITY OF PUBLIC TRANSPORTATION FOR PERSONS WITH VISUAL DISABILITIES.—Not later than October 1, 2006, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the effectiveness of alternative methods to improve the accessibility of public transportation for persons with visual disabilities. The report shall evaluate a variety of methods and techniques for improving accessibility, including installation of Remote Infrared Audible Signs for provision of wayfinding and information for people who have visual, cognitive, or learning disabilities.''.

On page 900, line 18, strike ''and''.

On page 900, line 22, strike the period and insert ''; and''.

On page 900, after line 22, insert the following:

(5) by adding at the end the following:

''(l) NOTIFICATION OF PENDING DISCRETIONARY GRANTS.—Not less than 3 full business days before announcement of award by the Secretary of any discretionary grant, letter of intent, or full funding grant agreement totaling $1,000,000 or more, the Secretary shall notify the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate and Committees on Transportation and Infrastructure and Appropriation of the House of Representatives.''.

On page 944, after line 21, insert the following:

SEC.____. TRANSIT PASS TRANSPORTATION FRINGE BENEFITS.

(a) TRANSIT PASS TRANSPORTATION FRINGE BENEFITS STUDY.—

(1) STUDY.—The Secretary of Transportation shall conduct a study on tax-free transit benefits and ways to promote improved access to and increased usage of such benefits, at Federal agencies in the National Capital Region, including agencies not currently offering the benefit.

(2) CONTENT.—The study under this subsection shall include—

(A) an examination of how agencies offering the benefit make its availability known to their employees and the methods agencies use to deliver the benefit to employees, including examples of best practices; and

(B) an analysis of the impact of Federal employees' use of transit on traffic congestion and pollution in the National Capital Region.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the results of the study under this subsection.

(b) AUTHORITY TO USE GOVERNMENT VEHICLES TO TRANSPORT FEDERAL EMPLOYEES BETWEEN THEIR PLACE OF EMPLOYMENT AND MASS TRANSIT FACILITIES.—

(1) IN GENERAL.—Section 1344 of title 31, United States Code, is amended—

(A) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(B) by inserting after subsection (f) the following:

''(g)(1) A passenger carrier may be used to transport an officer or employee of a Federal agency between the officer's or employee's place of employment and a mass transit facility (whether or not publicly owned) in accordance with succeeding provisions of this subsection.

''(2) Notwithstanding section 1343, a Federal agency that provides transportation services under this subsection (including by passenger carrier) shall absorb the costs of such services using any funds available to such agency, whether by appropriation or otherwise.

''(3) In carrying out this subsection, a Federal agency shall—

''(A) to the maximum extent practicable, use alternative fuel vehicles to provide transportation services;

''(B) to the extent consistent with the purposes of this subsection, provide transportation services in a manner that does not result in additional gross income for Federal income tax purposes; and

''(C) coordinate with other Federal agencies to share, and otherwise avoid duplication of, transportation services provided under this subsection.

''(4) For purposes of any determination under chapter 81 of title 5, an individual shall not be considered to be in the 'performance of duty' by virtue of the fact that such individual is receiving transportation services under this subsection.

''(5)(A) The Administrator of General Services, after consultation with the National Capital Planning Commission and other appropriate agencies, shall prescribe any regulations necessary to carry out this subsection.

''(B) Transportation services under this subsection shall be subject neither to the last sentence of subsection (d)(3) nor to any regulations under the last sentence of subsection (e)(1).

''(6) In this subsection, the term 'passenger carrier' means a passenger motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned or leased by the United States Government or the government of the District of Columbia.''.

(2) FUNDS FOR MAINTENANCE, REPAIR, ETC.—Subsection (a) of section 1344 of title 31, United States Code, is amended by adding at the end the following:

''(3) For purposes of paragraph (1), the transportation of an individual between such individual's place of employment and a mass transit facility pursuant to subsection (g) is transportation for an official purpose.''.

(3) COORDINATION.—The authority to provide transportation services under section 1344(g) of title 31, United States Code (as amended by paragraph (1)) shall be in addition to any authority otherwise available to the agency involved.

SEC. ____. FUNDING FOR FERRY BOATS.

Section 5309(i)(5) of title 49, United States Code, as amended by section 6011(j) of this Act, is amended to read as follows:

''(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A)—

''(A) $10,400,000 shall be available in fiscal year 2005 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals;

''(B) $15,000,000 shall be available in each of fiscal years 2006 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals; and

''(C) $5,000,000 shall be available in each of fiscal years 2006 through 2009 for payments to the Denali Commission under the terms of section 307(e) of the Denali Commission Act of 1998, as amended (42 U.S.C. 3121 note), for docks, waterfront development projects, and related transportation infrastructure.''.

On page 1291, strike lines 12 through 16 and insert the following:

(1) For fiscal year 2005, $7,646,336,000.
(2) For fiscal year 2006, $8,900,000,000.
(3) For fiscal year 2007, $9,267,464,000.
(4) For fiscal year 2008, $10,050,700,000.
(5) For fiscal year 2009, $10,686,500,000.

SA 738. Mr. KYL submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Insert new section:

"SEC. 7130. TECHNICAL CORRECTION OF RIGHTS AND REMEDIES PROVISIONS.

(a) Section 14704 (Rights and remedies of persons injured by carriers or brokers) is amended as follows:

(1) In subsection (a)—

(A) by striking 'IN GENERAL' and all that follows through 'injured' and substituting 'ENFORCEMENT OF ORDER-A person injured'; and

(B) by redesignating paragraph (2) as subsection (b)(2);

(2) In subsection (b), by striking 'Liability and damages' and all that follows through 'A carrier' and substituting 'LIABILITY AND DAMAGES-(1) A carrier'; and

(3) In subsection (d)(1), by striking 'under subsection (b)' and substituting 'under subsection (c)(2)(B)'.

(b) Section 14705 (Limitations on actions by and against carriers) is amended as follows:

(1) In subsection (c), by striking 'file' and all that follows through 'section 14704(b)' and substituting 'begin a civil action to recover damages under section 14704(b)(2)'; and

(2) In subsection (d), by striking 'under subsections (b) and (c) of this section' and substituting 'under subsection (b) of this section'.

This section shall apply to all civil actions pending or commenced in any court on or after its date of enactment.''

SA 739. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On Page 69, Line 15, add a new subsection 6009(h),

(h) CONTRACTED PARATRANSIT PILOT.—

(1) IN GENERAL.—Notwithstanding section 5302(a)(1)(I) of title 49, United States Code, for fiscal years 2005 through 2009, a recipient of assistance under section 5307 of title 49, United States Code, in an urbanized area with a population of 558,329 according to the 2000 decennial census of population may use not more than 20 percent of such recipient's annual formula apportionment under section 5307 of title 49, United States Code, for the provision of nonfixed route paratransit services in accordance with section 223 of the Americans with Disabilities Act (42 U.S.C. 12143), but only if the grant recipient is in compliance with applicable requirements of that Act, including both fixed route and demand responsive service and the service is acquired by contract.

(2) REPORT.—Not later than January 1, 2009, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report on the implementation of this subsection and any recommendations of the Secretary regarding the application of this section

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SA 740. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 1291, strike lines 12 through 16 and insert the following:

(1) For fiscal year 2005, $7,646,336,000.
(2) For fiscal year 2006, $8,900,000,000.
(3) For fiscal year 2007, $9,267,464,000.
(4) For fiscal year 2008, $10,050,700,000.
(5) For fiscal year 2009, $10,686,500,000.

SA 741. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

On page 872, strike line 24, and insert the following:

tives.

''(e) STUDY OF METHODS TO IMPROVE ACCESSIBILITY OF PUBLIC TRANSPORTATION FOR PERSONS WITH VISUAL DISABILITIES.—Not later than October 1, 2006, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the effectiveness of alternative methods to improve the accessibility of public transportation for persons with visual disabilities. The report shall evaluate a variety of methods and techniques for improving accessibility, including installation of Remote Infrared Audible Signs for provision of wayfinding and information for people who have visual, cognitive, or learning disabilities.''.

SA 742. Mr. INHOFE (for Mr. TALENT (for himself and Mr. DODD)) proposed an amendment to amendment SA 605 proposed by Mr. INHOFE to the bill H.R. 3, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table as follows:

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

SEC. 18____. NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS.

The Secretary of Transportation shall notify each State or political subdivision of a State to which the Secretary of Transportation awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is funded, in whole or in part, by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 567g).

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, May 11, 2005 at 2:30 p.m., in closed session to mark up the National Defense Authorization Act for fiscal year 2006.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 11, 2005, at 10 a.m., on Spyware.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, May 11, 2005 at 10 a.m.

The purpose of the hearing is to receive testimony on S. 895 a bill to direct the Secretary of the Interior to establish a rural water supply program in the reclamation States to provide a clean, safe, affordable, and reliable water supply to rural residents.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 11, 2005 at 2:30 p.m., to hold a hearing on U.S.-E.U. Regulatory Cooperation on Emerging Technologies.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, May 11, 2005, at 9:30 a.m. in room 106 of the Dirksen Senate Office Building to conduct an oversight hearing on Federal Recognition of Indian Tribes.

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

COMMITTEE ON THE JUDICIARY

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Wednesday, May 11, 2005, at 9:30 a.m., in SD226.

Agenda

I. Bills

S. 852, A bill to Create a Fair and Efficient System to Resolve Claims of Victims for Bodily Injury Caused by Asbestos Exposure, and for Other Purposes. [Specter, Leahy, Hatch, Feinstein, Grassley, DeWine.]

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 11, 2005, at 2:30 p.m. to hold a hearing.

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

SUBCOMMITTEE ON BIOTERRORISM PREPAREDNESS AND PUBLIC HEALTH

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Bioterrorism Preparedness and Public Health, be authorized to hold a hearing during the session of the Senate on Wednesday, May 11, 2005, at 2 p.m. in SD–430.

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

SUBCOMMITTEE ON PERSONNEL

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Personnel be authorized to meet during the session of the Senate on Wednesday, May 11, 2005 at 10 a.m. in closed session to markup the personnel programs and provisions contained in the National Defense Authorization Act for fiscal year 2006.

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests be authorized to meet during the session of the Senate on Wednesday, May 11, 2005 at 2 p.m.

The purpose of the hearing is to receive testimony on S. 100, to authorize the exchange of certain land in the state of Colorado; S. 235 and H.R. 816, to direct the Secretary of Agriculture to sell certain parcels of federal land in Carson City and Douglas County, NV; S. 404, to make a technical correction relating to the land conveyance authorized by Public Law 108–67; S. 741, to provide for the disposal of certain forest service administrative sites in the State of Oregon, and for other purposes; S. 761, to rename the Snake River Birds of Prey National Conservation Area in the State of Idaho as the Morley Nelson Snake River Birds of Prey National Conservation Area in honor of the late Morley Nelson, an international authority on birds of prey, who was instrumental in the establishment of this National Conservation Area, and for other purposes; and H.R. 486, to provide for a land exchange involving private land and Bureau of Land Management land in the vicinity of Holloman Air Force Base, NM, for the purpose of removing private land from the required safety zone surrounding munitions storage bunkers at Holloman Air Force Base.

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on Wednesday, May 11, 2005 at 11:30 a.m. in closed session to mark up the readiness and management support programs and provisions contained in the National Defense Authorization Act for fiscal year 2006.

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

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces be authorized to meet during the session of the Senate on Wednesday, May 11, 2005 at 9 a.m. in closed session to mark up the strategic forces programs and provisions contained in the National Defense Authorization Act for fiscal year 2006.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on today's Executive Calendar: No. 76, Maria Cino, to be Deputy Secretary of Transportation. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF TRANSPORTATION

Maria Cino, of Virginia, to be Deputy Secretary of Transportation.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MEASURE PLACED ON THE CALENDAR—S. 989

Mr. MCCONNELL. Mr. President, I understand there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 989) to ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred.

Mr. MCCONNELL. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceeding.

The PRESIDING OFFICER. Objection is heard.

The bill will be placed on the calendar.

ORDERS FOR THURSDAY, MAY 12, 2005

Mr. MCCONNELL. Mr. President and Members of the Senate, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. tomorrow, Thursday, May 12. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the majority leader or his designee, the next 30 minutes under the control of the Democratic leader or his designee; provided that following morning business, the Senate resume consideration of H.R. 3, the highway bill, and that there be 60 minutes of debate equally divided between the chairman and ranking member or their designees prior to the vote on invoking cloture on the pending substitute amendment.

I further ask unanimous consent that Senators have until 10:30 a.m. to file second-degree amendments.

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

PROGRAM

Mr. MCCONNELL. Mr. President, tomorrow, following morning business, the Senate will resume consideration of the highway bill. We will then have 60 minutes for debate before the cloture vote on the pending substitute. It is my hope that cloture will be invoked so we can move closer toward completing our work on this important legislation. Following the vote, we will continue working through whatever amendments are left. A number of amendments have indeed been filed, and Senators who wish to offer amendments should contact the managers at once. Senators should expect rollcall votes throughout the day in relation to amendments to the bill.

Again, it is our intention to complete action on this important legislation this week. Senators should expect busy days for the remainder of the week and are certainly asked to plan accordingly.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCONNELL. Therefore, Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate

stand in adjournment under the previous order.

There being no objection, the Senate, at 6:58 p.m., adjourned until Thursday, May 12, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 11, 2005:

DEPARTMENT OF THE INTERIOR

MARK A. LIMBAUGH, OF IDAHO, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR, VICE BENNETT WILLIAM RALEY, RESIGNED.

DEPARTMENT OF STATE

PAMELA E. BRIDGEWATER, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF GHANA.

WILLIAM ALAN EATON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PANAMA.

HENRIETTA HOLSMAN FORE, OF NEVADA, TO BE AN UNDER SECRETARY OF STATE (MANAGEMENT), VICE GRANT S. GREEN, JR., RESIGNED.

CONFIRMATION

Executive nomination confirmed by the Senate: Wednesday, May 11, 2005:

DEPARTMENT OF TRANSPORTATION

MARIA CINO, OF VIRGINIA, TO BE DEPUTY SECRETARY OF TRANSPORTATION.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.