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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 24, 2004, at 2 p.m.

Senate

THURSDAY, FEBRUARY 12, 2004

The Senate met at 8:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The guest Chaplain, Father Norman H. Elliott, All Saints Episcopal Church, Anchorage, AK, offered the following prayer:

Almighty God, under whom our many States are one Nation, we honor on this day, Abraham Lincoln. We remember his words spoken on the battlefield of Gettysburg: ''Four score and seven years ago, our fathers brought forth upon this continent a new nation conceived in liberty and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation—or any nation, so conceived and so dedicated—can long endure.''

Today we are engaged in a war on terrorism, testing once again whether this Nation can endure. In these perilous times it is well that we remember the words of Lincoln as he left Springfield to become the President: ''I now leave . . . with a task before me greater than that which rested upon Washington. Without the assistance of the Divine Being who ever attended him, I cannot succeed. With that assistance I cannot fail.'' Grant then, O God, Your assistance to the men and women called to the high office of Senator and the responsibilities entrusted to them in these grave hours. Give them the faith, wisdom, and courage they need to carry on and not fail. And bring soon, we pray, the day when these walls will resound, as they have in times past, with the shout of ''Victory'' and our Nation will again know peace and security and will endure.

We ask this in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

RESERVATION OF LEADER TIME

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

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1072, which the clerk will report.

The assistant legislative clerk read as follows:

A bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 2285, in the nature of a substitute.

Clinton/Bingaman amendment No. 2311 (to language proposed to be stricken by amendment No. 2285), to express the sense of the Senate concerning the outsourcing of American jobs.

Bond amendment No. 2327 (to amendment No. 2311), to limit liability with respect to the owners of rented or leased motor vehicles.

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will complete the final 30 minutes of debate prior to the vote on invoking cloture on the substitute amendment to S. 1072, the highway bill. That vote will occur at 9 a.m. today. If cloture is invoked, it is my hope that we will be able to dispose of any germane amendments in a timely manner, thereby clearing the way to wrap up consideration of the substitute. Once the substitute is disposed of, we still may require a cloture vote on the bill itself. It is my hope that we will be able to speed the process along and be in a position to complete action on the bill today. As was announced last night, it is my intention to remain in session until we pass this bill.

Senators should expect rollcall votes throughout the day. In addition, I remind all Senators that all second-degree amendments must be filed at the desk no later than 9 a.m.

The PRESIDENT pro tempore. The Democratic leader is recognized.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, the managers will yield to the Senator from California 5 minutes.

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

The PRESIDENT pro tempore. Under the previous order, the time until 9 a.m. shall be equally divided between the chairman and ranking members of the Environment and Public Works Committee or their designees. Does the Senator yield a portion of his time to the Senator from California?

Mr. JEFFORDS. Yes.

The PRESIDENT pro tempore. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I start off by thanking the chairman of the Environment and Public Works Committee, Senator INHOFE, for telling me yesterday that he would be really pleased for me to speak for 5 minutes. This Environment and Public Works Committee is quite a unique committee, extremely bipartisan. Working with Senator JEFFORDS, Senator INHOFE, also with Senator REID, Senator BOND, and also with the help of the majority leader and the Democratic leader, this is a very important moment for this Senate.

Why do I say that? Times are very tough in this Nation and we have a Nation divided on so many issues. But one thing we are not divided about is the fact that we have a very serious job issue in our country. Now, each party has reasons for why they think this is happening and I will not go into that; I don't have enough time to do it now.

This morning, I learned on the news that, surprisingly, jobless claims are up this week again, and retail sales are down. We have a problem in this country—outsourcing of jobs. That is a big problem in this country, although it seems that the administration doesn't think so. I think most Americans—a very strong number of Americans—believe that taking jobs overseas is a serious problem. Without those jobs, families struggle. With the fear of losing their jobs, our families are anxious.

This is a bill that will build the highway and transit systems we need. This is a bill that will put people to work with good jobs, excellent jobs, and good benefits that will bring a benefit to the country. No country that wants to be the leader of the world—which we already are—can survive if it doesn't keep it up with its infrastructure needs. This committee understands that. This Public Works Committee has overcome the things that divide us.

Is the formula perfect? No, it is not.

For my State, we are definitely doing better, and I am very pleased about that. But I can tell you this: We need the million jobs this bill will bring. We need the 100,000 jobs that will come to my State. We need these important road projects. We need to move goods in this society. Goods movement is one of the key issues we have addressed in this bill.

In States such as California, where goods are moving off ports and into the interior of the country, we need attention to these problems. This bill pays attention to these problems.

At my behest, there is language in the bill about using funds to reduce congestion. Congestion is a real problem. This chart shows how many hours are wasted every year with people sitting in their cars in traffic.

In Los Angeles—we are talking about a year's time—136 hours. That is what the average person is wasting sitting in their car in Los Angeles; San Francisco-Oakland, 92 hours a year; San Jose, 74; the inland empire, an area that is receiving all the goods from a very robust port of Los Angeles, 64 hours; San Diego, 51 hours.

Whether you are looking at jobs, whether you are looking at goods movement——

The PRESIDENT pro tempore. The Senator has used 5 minutes.

Mrs. BOXER. Mr. President, I ask if I may have 1 minute to complete my thoughts.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from California, Mrs. BOXER, have an additional 2 minutes.

Mrs. BOXER. That would be wonderful.

The PRESIDENT pro tempore. Without objection, it is so ordered. The Senator is recognized for an additional 2 minutes.

Mrs. BOXER. Mr. President, since I have 2 minutes, I wish to say to my chairman—he may not have heard me—how proud I am of this committee. His work, along with Senator REID, Senator JEFFORDS, and the two leaders, has brought us to this point. I personally say for my State and the people in my State who are stuck sitting in traffic 136 hours a year in Los Angeles, thank you.

The Senator's State is a small State. We are a State with 35 million people, growing to 50 million people. This bill is our lifeblood. I am so pleased we have a chance today to vote up or down on a clean bill.

Are there problems with the fact the Commerce Committee did not produce a piece about rail? I think it is a problem. I sit on the Commerce Committee, and I wish we had done it, and I hope, as this bill moves forward, we can address that issue. But we have a bill that is going to meet the problems of this century, that is going to move us forward.

This is the greatest country in the world. We have to have an infrastructure that keeps up. I thank very much the leaders of the committee on which I am proud to serve. I thank the Chair. I hope we get a resounding vote so we can move to this bill and do something to create jobs and create an infrastructure that we need at this time.

Mr. FEINGOLD. Mr. President, today the Senate will vote on cloture on the Inhofe substitute amendment to S. 1072, the SAFETEA bill. As we all know, the country has important transportation needs that Congress must address, and I commend the managers of the bill for working hard to address highway construction, mass transit, highway safety, and other important programs.

This is a very important bill, and I am not taking my vote lightly. However, I am concerned that this bill does not do enough to help meet the transportation needs of my constituents in Wisconsin. And for that, and other reasons, I will be voting against cloture today.

Before I discuss some of my main concerns with the bill, I want to note that the substitute amendment before us was laid down on Tuesday. Furthermore, I understand that the text was not immediately available for review. I know how hard the managers have been working, and I know how important this bill is. But surely it is reasonable to give Senators more than 24 or even 48 hours to review a huge and complicated piece of legislation like this before filing cloture.

I appreciate the months of hard work that my colleagues have spent on this bill. However, I have serious concerns about the funding formula that this bill would establish. Under that formula, certain States would continue to receive significantly more money than they pay into the highway trust fund, while other States continue to be denied their fair share.

Wisconsin is one of the States that will get the short end of the stick. While increasing the total dollars coming to Wisconsin, this bill would ensure that citizens of Wisconsin no longer get back at least one dollar for every dollar that they pay into the highway trust fund.

I worked hard with the rest of the Wisconsin delegation during the last authorization to make sure that our State finally got a fair rate of return. Let me tell my colleagues, that change was long overdue. According to numbers from the Department of Transportation, from 1956 through 2000, Wisconsin got back just 90 cents on every dollar it paid into the trust fund.

In TEA–21, Wisconsin at last received a fair return. Unfortunately, this bill will take us back to where we were for the previous four decades—in the hole. Under the new formula, Wisconsin will once again be a donor State, with average rate of return of 95 percent. I have spoken to other members of our State's delegation, and I think I can safely say we agree that Wisconsin deserves better.

I am also concerned about some of the environmental provisions in the bill, particularly those with a potential impact on the Nation's air quality. The substitute modifies current transportation regulations dealing with long-range transportation planning, which could result in a failure to adequately consider the long-term effects of new projects on air quality.

The substitute also potentially undermines the National Environmental Policy Act—NEPA—and section 4(f), which guarantee meaningful public participation in review of the impacts of proposed highway projects.

And I am concerned that the substitute would allow the Federal Department of Transportation to ignore

the often valuable input of States, tribes, and local governments, who, in my State of Wisconsin, have spent valuable public resources and time to develop transportation and land use plans.

All of which leads me to believe that now is not the time to cut off debate on the substitute. We need plenty of time to analyze and understand the full ramifications of this bill. And, I think we need time to try to improve the bill. I will continue to work hard with the senior Senator from Wisconsin and the rest of the State's delegation to do everything that we can to provide Wisconsin with a transportation bill that is fair for our constituents.

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

The PRESIDENT pro tempore. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. JEFFORDS. Mr. President, the vote we are about to take is not just a cloture vote on a transportation bill. The vote to move forward on this legislation is about safety, it is about worker productivity, it is about family, it is about fairness, and it is about fulfilling our responsibility to the American public. But most importantly, it is about jobs—jobs, jobs, jobs.

These jobs are not in China or Singapore or Chile. These jobs are in Portland, Springfield, Los Angeles, Kansas City, and Burlington. This legislation is balanced, it is fair, and it is paid for. We owe it to our constituents to finish this bill today. Tomorrow let's send it to the House and then to the President.

I urge my colleagues to support moving forward and completing this vital legislation. Vote for cloture, vote for jobs.

I yield the floor.

The PRESIDENT pro tempore. Who seeks time?

The Senator from Oklahoma.

Mr. INHOFE. Mr. President, we have had 2 weeks of a lot of discussion. We haven't had a chance to vote on amendments mostly because there are some Members who have been objecting to moving forward to consideration of amendments. I think that is regrettable.

We are now to the point where we are going to have a vote on cloture. It is absolutely necessary. The alternative to this would be an extension. Probably 20, 30 different times Members have come in and said we should have an extension. If we have an extension, we will not have streamlining provisions, and we cannot move on with IPAM. We cannot immediately start constructing these roads and bridges.

It doesn't make any sense to stall and stall and wait around and do nothing. We want to get this bill on the road. That is what we are going to do, and we are going to do it today.

I regret a lot of people who wanted to have amendments considered during the last 2 weeks have not been able to do so. I regret that some people just blocked them from having that opportunity.

There have been a lot of objections that have come up on this bill. Members keep talking about the 40-percent increase—40-percent increase. That is 40 percent over 6 years. If you said 6.2 percent for the infrastructure of America that is lagging so far behind, no one could complain about that. They are making it appear this is 40 percent in one year. It is not.

They are talking about the amount of money in this bill. We have to understand we have two things we are looking at. One is capital outlay and one is obligation limitation. This is a perfectly reasonable bill. We have done something that has not been done before. It was not done in 1991, and it was not done in 1998. We have stayed with the formula. The alternative is to stay with the formula, like we failed in TEA–21 and failed in ISTEA, and we will have to put in a minimum guarantee where all you do is pacify some 60 voters by giving them whatever they want in the percentage of the overall, and as to the rest, who cares; we have our 60 votes and we run.

That is not the way we did it this time. For that we have been punished. We have had people assail this bill when this is the first time it has been done right.

The formulas took into consideration many factors. I know others want to be heard. I don't want to use a lot of time. At an appropriate time, I am going to go over what went into these formulas. Fast-growing States, slow-growing States, donor States, donee States—all these factors were considered, and then we came up with a formula.

Sure, I heard the two Senators from Arizona were complaining they didn't think their State had enough and, at the same time, they were complaining we were spending too much on the bill. When we look at the formula, their State still gets $40 million more than my State of Oklahoma over 6 years. Any State can complain about how the formula comes out. The bottom line is every State gets a minimum of a 10-percent increase. The average is 35.6 percent.

It is a good bill. We are going to get cloture. We are going to move ahead. If there are germane amendments everyone agrees should be considered, we will consider them. I look forward to doing that. Cloture is important. We are going to get cloture and bring this step to a halt.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, I wish to speak for a couple of minutes to say I hope we can invoke cloture this morning. I think this debate has been less than many of us had hoped. We hoped we could see more amendments. We hoped we could have a good debate about many of the issues.

This is a good bill. It will create the jobs that many of us have talked about on this floor for the last couple of weeks. It will create perhaps 1 million, 2 million jobs. We have an infrastructure deficit that is growing, and this bill, more than any other bill we will take up this year, is going to address that deficit.

For a lot of reasons, this represents the commitment and investment to infrastructure and our economic growth that I think warrants support for the bill.

I am very concerned about where we go from here. The administration has expressed opposition to this legislation. The House has indicated they do not support the approaches that have been reflected in this bill, the very delicate balance we have achieved in public transit and a commitment to highways. I am disappointed we were not able to deal with the railroad question, as Senator HOLLINGS and others noted yesterday. The business of completing our work is far from finished.

I will put my colleagues on notice that we will not be prepared to move forward to conference until we have a better understanding of the degree to which there is some meeting of the minds on these issues, on the commitment and investment to highways themselves, on a commitment to railroads, on a commitment to public transit, on a commitment to a budget that will accommodate the infrastructure deficit we face. We will take conferences one step at a time, and certainly in this case that is all the more imperative.

I commend the managers of the bill for the extraordinary bipartisanship that was reflected in coming to this point. Senator INHOFE, Senator JEFFORDS, Senator BOND, Senator REID, and others deserve great credit for working as closely together as they have. If we can do that through this whole process, we will have a good result at the end. We will have a result that will generate strong bipartisan support.

I think we will win cloture today in large measure because we have been able to demonstrate the bipartisanship that has brought us to this point, even with the misgivings I have just articulated. I look forward to working with our colleagues in that spirit and fashion and I hope that colleagues on both sides of the aisle will recognize the value of this work product and support cloture this morning.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I thank the minority leader for his very solid views. Once again, I thank my colleagues on the other side of the aisle, Senator JEFFORDS and Senator REID, for working in a bipartisan way to produce a bill that is extremely important for the long-term economic growth and well-being of our country.

Everybody agrees we need to put much more money into roads, highways, bridges, and mass transit. This bill does that. This bill also would create significant numbers of jobs right away if we get it passed. If this bill passes, 90,000 jobs will be created this year. For every billion dollars spent on highways, it creates 47,500 jobs.

There are some on our side of the aisle and some others who have said, well, this bill is too much. The President has recommended $256 billion in obligation limits. Obligation limits are what is spent under the bill. The contract authority is authorizing language that allows spending up to the higher amount. That is subject to the normal process in appropriations and subject to limits imposed by the budget on transportation.

This bill is at $290 billion. The President was at $256 billion. I believe clearly they have indicated there has to be negotiations. There have to be negotiations with the House. Whatever bill we pass is going to be changed because we have to negotiate with the House. Obviously we want to hear the concerns of the White House so we can develop a bill that will be signed by them. We did not go through this drill for over a year not to get something through. Make no mistake about it, this is the last and only chance to get started on the kind of major construction we need on highways, roads, and bridges this year, and to do what is needed for mass transit this year. If we do not invoke cloture and pass this bill this week, there will be no highway bill. We will be stuck at the old level at best, even if we get an extension, and that extension does not do us any good. That extension does not increase the building of roads and does not increase the assistance for mass transit that is so important.

There will be amendments. We look forward to having healthy debates. I am sure after people have rested up for almost 2 weeks they will have lots of good ideas. We look forward to having a busy day, but we cannot work on this bill unless we invoke cloture. Whatever the Senate decides, we will take that to conference. We need to pass this bill. I believe this is going to be the most important economic development bill and job-creating bill in this session of Congress.

Furthermore, it is, as its title says, a major contribution to safety on our highways. The administration has named it SAFETEA and we have included almost all of their safety proposals in this bill. Having traveled the roads of Missouri and traveled the two-lane highways that are marked with white crosses where somebody's family member, somebody's friend, somebody's spouse has died, because there is too much traffic on a two-lane road and somebody has taken a chance, fatalities result. They passed where they should not have. They had gotten out of their lane. That is why we have four-lane highways. We do not have them in Missouri.

There are many provisions that are going to be important for this Nation. I know the distinguished President pro tempore has a proposal to help connect communities in Alaska that have not been connected by roads. I believe that is a high-priority item. There are many other priority items that must be dealt with in this bill.

I urge my colleagues on both sides of the aisle, let's invoke cloture; let's get about the business of voting on amendments. We are ready and open for business, but we will have to negotiate with the House and the White House before we bring back a final version, which I hope can be passed very shortly, perhaps by the end of the month, to get highway construction going, improve safety, and improve the job situation in the United States.

I yield the floor.

The PRESIDENT pro tempore. There is one minute and 55 seconds on the majority side and one minute and 42 seconds on the minority side.

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

The PRESIDENT pro tempore. The clerk will call the roll.

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

Mr. INHOFE. Mr. President, I know we have a couple of minutes remaining. This morning we have covered some of the arguments that have been made over the last 2 weeks. There are some aspects that have not been talked about. I do think we should compliment the Finance Committee. They have taken a lot of heat. They have taken a lot of criticism—unjustly, I might add. We made a request of them when we came up with this bill, at the figures we had in both capital outlay and obligation limitation. We asked Senator BAUCUS and Senator GRASSLEY if they could come up with the amount of money to do this so it will comply with what the President outlined when he said he did not want a tax increase, he did not want to go into deficit or have it come out of the general fund, and they have done that. They have been criticized on this floor.

I do know this, that the highway trust fund has been raided for years, and we are now in a position where we can correct and rectify that problem. I think this is one of the good things that has come out of this bill, and I applaud the Finance Committee for the work they have done.

The PRESIDENT pro tempore. The Senator's time has expired. The minority has one minute remaining.

Mr. JEFFORDS. Mr. President, I yield back our time, through the Chair.

CLOTURE MOTION

The PRESIDENT pro tempore. All time is yielded back. Under the previous order, the hour of 9 a.m. having arrived, the Senate will proceed to a vote on the motion to invoke cloture on amendment No. 2285.

Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending substitute to Calendar No. 426, S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Bill Frist, James M. Inhofe, Christopher S. Bond, Gordon Smith, Lamar Alexander, Richard G. Lugar, Pat Roberts, Robert F. Bennett, Mike Crapo, Jim Bunning, Ted Stevens, Conrad Burns, Chuck Hagel, Charles Grassley, Trent Lott, Saxby Chambliss.

The PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 2285 to S. 1072, a bill to authorize funds for Federal aid highways, highway safety programs, and transit programs, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

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

The result was announced—yeas 86, nays 11, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—86

Akaka	Chafee	Enzi
Alexander	Chambliss	Feinstein
Allard	Clinton	Fitzgerald
Allen	Cochran	Frist
Baucus	Coleman	Graham (SC)
Bayh	Collins	Grassley
Bennett	Conrad	Hagel
Biden	Cornyn	Harkin
Bingaman	Corzine	Hatch
Bond	Craig	Inhofe
Boxer	Crapo	Inouye
Breaux	Daschle	Jeffords
Brownback	Dayton	Johnson
Bunning	DeWine	Kennedy
Burns	Dodd	Landrieu
Byrd	Dole	Lautenberg
Campbell	Domenici	Leahy
Cantwell	Dorgan	Levin
Carper	Durbin	Lieberman

Lincoln	Nickles	Smith
Lott	Pryor	Snowe
Lugar	Reed	Stabenow
McConnell	Reid	Stevens
Mikulski	Roberts	Talent
Miller	Rockefeller	Thomas
Murkowski	Sarbanes	Voinovich
Murray	Schumer	Warner
Nelson (FL)	Sessions	Wyden
Nelson (NE)	Shelby	

NAYS—11

Ensign	Hutchison	Santorum
Feingold	Kohl	Specter
Gregg	Kyl	Sununu
Hollings	McCain	

NOT VOTING—3

Edwards	Graham of Florida	Kerry

The PRESIDING OFFICER. On this vote the ayes are 86, the nays are 11. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Oklahoma.

Mr. INHOFE. 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. 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.

AMENDMENT NO. 2311

Mr. INHOFE. Mr. President, I raise a point of order that amendment No. 2311 is not germane.

The PRESIDING OFFICER. The point of order is sustained. The amendment falls.

The Senator from Texas.

AMENDMENT NO. 2388 TO AMENDMENT NO. 2285

Mrs. HUTCHISON. Mr. President, I rise to offer amendment No. 2388 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Mr. KYL, Mr. LEVIN, Mr. GRAHAM of Florida, Mr. MCCAIN, Ms. STABENOW, and Mrs. FEINSTEIN, proposes an amendment numbered 2388 to amendment No. 2285.

The amendment is as follows:

In section 139 of title 23, United States Code, as added by section 1201 of the amendment—

(1) strike ''SET-ASIDE.—'' in subsection (b)(2) and insert ''FUNDING.—'';

(2) strike ''of the amounts made available'' in subsection (b)(2) and insert ''the amounts made available'';

(3) strike ''$439,000,000'' in subsection (b)(2);

(4) strike ''allocated'' in subsection (c)(1)(A) and insert ''apportioned'';

(5) strike ''subsection (d).'' in subsection (c)(1)(B) and insert ''subsection (e).'';

(6) redesignate subsections (d) and (e) as subsections (e) and (f), respectively, and insert the following after subsection (c):

''(d) DISTRIBUTION OF FUNDS.—

''(1) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM DISTRIBUTION.—Notwithstanding section 1101(13) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, and in lieu of the amounts authorized by that section, there are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for carrying out the infrastructure performance and maintenance program under this section—

''(A) $2,000,000,000 for each of fiscal years 2004 and 2005; and

''(B) $1,750,000,000 for each of fiscal years 2006, 2007, and 2008.

''(2) EQUITY DISTRIBUTION.—On October 1 of each fiscal year, the Secretary shall reserve a sufficient amount of the funding available to carry out this section to provide a final equity adjustment, after making the apportionment under section 105 of this title, for each State to increase the percentage return for all highway apportionments, as compared to the tax payments attributable to the States paid into the Highway Trust Fund (other than the Mass Transit Account), to—

''(A) for fiscal year 2005, 91 percent;

''(B) for fiscal year 2006, 92 percent;

''(C) for fiscal year 2007, 93 percent;

''(D) for fiscal year 2008, 94 percent; and

''(e) for fiscal year 2009, 95 percent.

''(3)(E) REMAINDER DISTRIBUTION.—On October 1 of each fiscal year, the Secretary shall apportion the funds available for allocation under this section among the several States, after the application of paragraph (1), according to the ratio that—

''(1) the percentage of tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account), bears to

''(2) 100 percent of tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account).''; and

(7) strike subsection (e), as redesignated, and insert the following:

''(e) REDISTRIBUTION OF ALLOCATED FUNDS AND OBLIGATION AUTHORITY.—On the date that is 180 days after the date of apportionment, or as soon thereafter as practicable, for each fiscal year, the Secretary shall—

''(1) withdraw—

''(A) any funds allocated to a State under this section that remain unobligated; and

''(B) an equal amount of obligation authority provided for the use of the funds in accordance with section 1101(a)(13) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003; and

''(2) reallocate the funds and redistribute the obligation authority to those States that—

''(A) have fully obligated all amounts allocated under this section for the fiscal year; and

''(B) demonstrate that the State is able to obligate additional amounts for projects eligible under this section before the end of the fiscal year.

''(f) APPLICATION WITH SECTION 105.—Notwithstanding section 105(a)(2)(H) of this title, section 105(a) shall not apply to funds apportioned under this section.''.

AMENDMENT NO. 2591 TO AMENDMENT NO. 2388

Mr. INHOFE. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. INHOFF] proposes an amendment numbered 2591 to amendment No. 2388.

The amendment is as follows:

At the end, add the following:

''SEC. . This section shall take effect one day after enactment of this Act.''

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I rise to talk about the importance of amendment No. 2388 without the second degree. It is a very important time for us to start treating our States more equitably and this bill—I am sorry to say—is a step backward.

TEA–21 embraced as its simple goal the elimination of redistribution of highway funds based on political considerations. For example, under the 1998 bill, Texas' rate of return rose from 77 percent to 90 percent in the formula programs. This means that for every dollar a Texas gasoline purchaser sent to Washington, we got 90 cents back on the dollar. So we contributed 10 percent of our revenue to other States. All of the donor States in TEA–21 were raised to the 90.5 percent level. There has never been a time when we have treated donor States differently from one another until this year.

The bill before us creates a new superdonor status. Growing States and big States, such as California, Texas, Florida, and some smaller States, such as Colorado and Arizona that are also rapidly growing, are locked into superdonor status, still sending nearly 10 percent of our highway funds that we need even more because we are fast growing.

My State is facing budget deficits and is trying to make those up so we can spend the money we need to fix our highways. Our States are rapidly growing, and yet we are continuing to be asked to send 10 percent of our highway funds to other States. We are the States that need the most new infrastructure, because we are experiencing the greatest population growth.

My amendment would correct a small part of this glaring inequity. It would take $9 billion from the nebulous IPAM account and redirect it to the States that need it the most. Basically what you would do is take the IPAM account, which contains projects chosen on the basis of favoritism, and put that into the formula so that everyone is on a more level playing field.

It is not a level playing field. Neither my State nor any other donor State will come out of donor status under this amendment. But it will provide gradual relief for these States to begin to work up to that 95 cent rate of return over the course of the bill.

Under my amendment, all States would receive a minimum of 91 cents on the dollar in fiscal year 2005, and that minimum would rise 1 percent each year until 2009. My amendment would guarantee more money for every State. It would not reduce any State's formula percentage. It would not reduce any State's formula income by a penny. It simply distributes unallocated funds already in the bill, not increasing the bill, not lowering any State's income level. But instead distributing that money by projects, it will create a much fairer formula-based system.

For 50 years, the Federal aid highway program and the States have maintained one of the world's finest highway networks. Highways are the first choice to transport most of the goods

that drive our economy. The majority of that system was designed in the 1950s to help a rapidly growing Nation to connect to new population centers, especially in the West.

Today there are other critical needs to be addressed. We are not in the 1950s. We are in another century, and we have new problems. One of those is the trade that has been created by NAFTA. That is not a problem, except that it has increased the highway needs in the States that have the corridors from Mexico to Canada. NAFTA has provided huge national benefits. The resulting traffic is crippling to our Nation's infrastructure. Early on smaller States and Western States needed extra help from larger and more established States such as Texas. Today the reverse is true.

The funding inequity is increasing at a time when States are growing more equal in their abilities to contribute and our levels of existing infrastructure among the States are much more similar.

In the name of fairness, why don't we go to a strict formula system that will increase everyone's part of the pie on a more equitable basis than when 100 Senators from 50 States go in a room and start trying to divide the funding themselves, knowing that some States are going to be left out, and some States are not going to be fairly treated? Why not make it fair from the beginning?

My home State of Texas has borne the greatest burden over the life of the Federal aid highway program. Since 1956, Texas has contributed over $5 billion more to the program than we have received back in funds to build and repair our own highways. Each and every year Texas has sent more highway funding to Washington than it has received to cover projects in our State.

Texas has more than 300,000 highway miles, the most of any State in our Nation. Our highways make up almost 8 percent of the total national mileage and 7 percent of interstates. As a result, the over 20 million people of Texas necessarily buy more gasoline and contribute more to the highway trust fund financed by the gasoline tax.

In the past 12 years, Texas and other donor States have made good progress. In 1998, Texas received only a 77-cent return on every dollar sent to Washington, a loss of $1.7 billion. Current law guarantees us 90.5 cents on the dollar, but this is still $2.6 billion less than the contribution we make. This is a significant loss to a State that needs the infrastructure improvement to take on the added traffic caused by NAFTA.

The minimum guarantee applies only to formula funding programs and does not restrict funds distributed through earmarks or by the administration in the underlying bill. Though we had hoped for more equality this year, and we hoped for the minimum of 95 cents return on every dollar we send to Washington, it has not happened.

Of course, I hope the chairman and the committee understand I could not possibly support a highway funding formula so contrary to the needs of my home State. We are the biggest loser in this bill, to be sure.

I am also concerned about the precedent it sets to create a superdonor status for the largest, fastest growing States in our country. This is not a good precedent for a United States that is supposed to be one United States.

Our States are much more equal now in ability to contribute and pay for their own services. This is no longer a situation where we have vast amounts of western land that have no roads and no infrastructure. So I hope we will not set a precedent of a superdonor State category where we take the largest, fastest growing States and treat them even worse than they have been treated before and for so long.

The bill before us distributes $227 billion in highway funds using a formula that will hold six States—Texas, California, Arizona, Colorado, Florida, and Maryland—at this 90.5 percent rate of return for 5 years. Only in the sixth and final year does the level increase to 95 cents. If Texas were to receive 95 cents for all 6 years, the formula would provide Texas hundreds of millions of additional dollars over this period. But the amendment I have pending today does not even try to make up this discrepancy. What we are trying to do is increase just the rate of return 1 percent per year, starting at 91 cents, and reaching 95 cents in the last year. It is, I think, a reasonable compromise. It is fair to every State. It increases every State's take in this bill, and it will set a precedent of fairer distribution, even though there will still be many donee States that will get more than they send to Washington.

The superdonor States have one aspect in common: They are the fastest growing States in America. But the formula in the bill offers the least relief to the States whose needs are most pronounced: the States and cities with populations that are developing most rapidly. Three of these six are also on the Southwest border, so we have the added burden of infrastructure needs brought on by NAFTA.

In 2002, Texas contributed 9.11 percent of the total dollars in the trust fund, up from 8.27 percent 4 years earlier. Buying more gas allows us to contribute more funds. That is why when the distinguished chairman of the committee says, ''But you are getting more money than the spending increases in this bill,'' I have to say, yes, but that is because we are contributing more. We are still getting less in return than the other donor States that are going to be raised to a higher level at an earlier time.

So, yes, we are getting more than the 36 percent increase in spending in the bill—I am told we are getting 42 percent—but what we are contributing is far more than the 42 percent growth we would be receiving. It is an enormous loss to Texas over the period of this bill; that amount could go a long way toward alleviating the huge traffic jams we are facing on our major NAFTA corridors.

Eighty percent of NAFTA traffic travels through my home State of Texas. And while the entire Nation benefits from that resulting commerce, Texas bears the brunt of maintenance and upkeep on our highways. In 2002, over 4 million trucks hauling 18 billion pounds of cargo entered from Mexico through 24 commercial border crossing facilities. Over 3 million of those trucks—or 68 percent—entered through Texas. In addition to commercial traffic, 90 million personal vehicles from Mexico also traveled through the southwest border States.

So Texas, with its increased infrastructure burden, is getting a lower percentage of what it sends to Washington than almost all of the other States. I hope we don't break precedent and create this new stepchild in donor States because I know if we see it go through today, we will see it again in every formula. So the inequity in formula funding for Texas, California, and Florida will be imprinted on every formula we have in our system. This is a terrible precedent for a country that calls itself the United States of America.

To its credit, the committee did, for the first time, create a border and corridor fund that reflects the added burden on the States on our northern border with Canada and southern border with Mexico. I commend the chairman and thank him for adding those funds. However, I have to say the $1 billion for each of those funds, when Texas gets its portion, will still not bring us anywhere close to a fair share or match the amount we are losing by not being treated like other donor States. The superdonor category just sets a terrible precedent.

I would love to take the chairman of the committee and the ranking member to Interstate 35. Interstate 35 goes from the border of Mexico up through Austin, San Antonio, and Dallas. I had the unfortunate experience of driving from Austin to Dallas one evening, and it was a parking lot. It took us longer to drive from Austin to Dallas—almost 6 hours—than it does to fly from Washington, DC, to California. It is ridiculous. It is a parking lot because of the added traffic from Mexico that comes through this very important NAFTA corridor.

I know small States have more voting power in the Senate. I also understand small States have traditionally had a larger piece of the funding pie than larger States. However, I have to say I think the concept of donor/donee States should go by the wayside, in a gradual manner, because States are much more equal in their capacity to pay than ever before, and some of these larger States on the border have a real and huge infrastructure need due to NAFTA traffic.

I see my distinguished colleague from Arizona is in the Chamber. He wishes to speak on the bill and on my amendment as well. I am going to yield the floor, but first it is my great hope that the Senate will not take the unprecedented move of creating superdonor States that are in fact the stepchildren of America. Creating such an inequity says, ''because you are bigger, you should pay more,'' without considering you are sending more to Washington, you are in a crunch from the NAFTA traffic that is coming through your State, you have extra needs, you are a large, growing State, and you are being asked to take a 10 percent deficit on the funding you send to Washington despite all these reasons.''

It is time for the Senate to step up to the plate and say that we should not have stepchildren in formula funding. This is a new concept. In the past, the donor status has been shared by 20 to 25 States. So the cost of helping smaller States has been less of a burden. It is no longer fair to have such a disadvantage, and it is especially not right when many of these border States have greater infrastructure needs.

When we were trying to help the West, Texas stepped up to the plate, as other States did. Now it is time to help the States that have the fastest growing populations and the greatest infrastructure needs and not to put them in a stepchild status for our country that calls itself the United States of America.

I thank the Chair. I yield to the distinguished senior Senator from Arizona.

The PRESIDING OFFICER (Ms. MURKOWSKI). The senior Senator from Arizona.

Mr. MCCAIN. Madam President, I rise in strong support of the amendment being offered by the Senator from Texas. Her eloquent explanation of the amendment is very compelling.

Let me go back to the larger issue. It is fascinating to me that after receiving a Statement of Administration Policy where the President of the United States says:

> In total the Senate bill authorizes $318 billion in spending on highways, highway safety, and mass transit . . . a full $62 billion above the President's request for the same period. . . .
>
> Accordingly, if legislation that violates these principles (such as this legislation, which authorizes $318 billion) were presented to the President, his senior advisors would recommend that he veto the bill.

There was discussion amongst Republican Senators yesterday that we will fix it in conference. I have this quaint and unusual idea that when we are authorizing $256 billion or $318 billion, maybe the whole Senate ought to be involved rather than ''fixing it'' in conference.

I cannot speak for my friends on the other side of the aisle—they are the opposition party—but how does this party, the party of fiscal sanity, the party of smaller Government, the party of lower taxes, the party that insisted that any revenues to fund highways should come out of the trust fund, now support a bill—according to the last vote—overwhelmingly when the President of the United States and the American people are saying ''enough.'' Enough deficit spending, my friends. Enough. We are mortgaging our children's futures.

We just found out we have been sold a bill of goods on the Medicare prescription drug bill. It is $153 billion more than it was advertised to be a few months ago. When does it stop? When does the Republican Party find its soul? And this bill is an outrageous manifestation of how badly we have left our moorings. The amendment of the Senator from Texas at least restores some equity and fairness to this proposal.

I don't want to take too much more time except to mention one other point about the President's message:

> In addition, the Administration opposes inclusion in a surface transportation bill of unrelated provisions regarding Amtrak. Any legislation regarding the future of Amtrak should be considered separately and should provide for meaningful reforms. . . .

What is interesting about that aspect of the President's message is, as chairman of the Commerce Committee, none of the provisions that the administration objects to came out of the Commerce Committee, the authorizing committee. It was stuck in by the managers of the bill who have about as much knowledge, expertise, and jurisdiction over Amtrak as I do over nuclear science.

It is fascinating the overreach of this bill. They add provisions for Amtrak that have nothing to do with their area of jurisdiction, and what we reported out of the Commerce Committee was not objectionable to the administration.

Finally, this whole formula is just crazy. It is bizarre and byzantine. In TEA–21, there was an immediate increase in the highway formula to provide each State a minimum return of 85 percent to 90.5 percent. The very first year of the authorization period, all donor States received an immediate increase. It has still not been explained to me or any of my colleagues why we should wait 5 years before our share increases. Why should we wait 5 years? It is patently unfair, and it is patently abusive, particularly for those of us who represent States that are dramatically growing in population, which means that our needs, obviously, are greater.

I make no argument that my State deserves more, not in any way. I say the citizens of my State deserve $1 back for every dollar they sent in the form of taxes to the Federal Government.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I have said on this floor on a number of occasions how the chairman and ranking member of the full committee and how the subcommittee chair and the ranking member of the subcommittee have worked together for more than a year to come up with a program that we thought would be the most fair for this country.

I say to my friend from Arizona for whom I have the deepest respect, and my friend from Texas for whom I also have great affection, in years past we did not go through the turmoil of coming up with 95 percent for all States. In years past we just decided how many votes it would take to get a bill passed. Some States did very poorly.

When I started in this process, some States got less than 80 cents' return on every dollar. It was moved up to 80, then 85, then 90.5. We have taken this gigantic first step from the last bill, which had no increase, for 95 cents for every State. It is a remarkably fair, good way of doing business.

I say to my two friends—I acknowledge it is imperfect—but we have had people who have run on computers numerous other programs to try to come up with something that would satisfy the needs of this country. How would the State of Alaska like it if for every dollar they paid into the highway trust fund they got $1 back? Alaska would suffer. The State of Alaska, which has such tremendous, important needs and has weather conditions that make road construction and road rehabilitation extremely expensive, could not survive with a return of $1 for every $1 they paid in.

My friends have indicated that would be the fair thing to do: For every dollar a State puts in, they get a dollar back. It doesn't work.

Yesterday, the distinguished senior Senator from Wyoming spoke. Wyoming is a perfect example of a State that cannot survive on dollar for dollar. What we have done is taken into consideration in this formula States, such as Wyoming and Alaska, and made sure they get more than $1. If some States get more than $1, some States are going to have to get less than $1. That is the way it is.

These big States—Texas, which has two votes in this body; Florida, which has two votes in this body; California, which has two votes in this body—we could have made it so that all States got 95 percent except States with populations of more than 15 million people. That would have been easy. We would have lost six votes. We could have still passed this bill.

We thought in fairness that those large States should also get 95 cents on the dollar, and we have done that. I think this is fair and reasonable, and I commend and applaud my colleagues on this committee.

We have a diverse group of Senators on this committee. We were able, working for more than 1 year, to come up with a formula that met the needs of this country to the best of our ability. To come in at this late date and say:

We have a better formula, we have worked on it the last week, and your work the past year does not mean much, and let's have the State of Alaska get a dollar back for what they pay in, the State of Wyoming get a dollar back for what they pay in, and everybody will be happy and we can go home—what we have done has been extremely fair.

I hope the Senate will respond as they did with this cloture vote. This is a resounding vote that we had this morning because the Senators recognized by a vote of 86 to 11 that what we have done is appropriate.

There are very few measures that come before this body that get a vote like this: 86 to 11. I think that represents fairness in this legislation.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. MCCAIN. Will the Senator from Oklahoma yield to me for a comment, through him, that is a correction?

Mr. INHOFE. I will yield for 1 minute.

Mr. MCCAIN. I say to the Senator from Oklahoma, I was incorrect in my comments concerning the Amtrak provisions. These were provisions that I opposed in the bill and I was incorrect when I stated that they were put in by the committee. My apologies to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, I am going to withhold commenting on this amendment because I have made notes. I know it was not deliberately misrepresented, but the information is not accurate that we have heard on this amendment. It is very important that everyone know that, but I would rather have everyone vent everything they want to vent.

I wish to make one comment, first, though. The Senator from Nevada pointed out what we could have done with the six fastest growing States, the largest States. We could have lost six votes and never even looked back. That is exactly what happened 6 years ago. They went into a minimum guarantee program where they were counting votes. It was totally political and that is what we are getting away from. We have a good formula. I will defend that momentarily after we hear from everyone who is speaking in support of this flawed amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Madam President, this bill contains a very carefully crafted formula. This committee worked for close to a year to develop the formula contained in S. 1072. Balance, that is what this bill is about. The donor States such as Texas have gained 95 percent. That has been their goal for 6 years. Some would say for longer. Now they have achieved their goal and they are still complaining.

This formula is fair. The formula the Senator from Texas put forward would undermine the highway program in many States and therefore I oppose the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, I rise in support of the amendment of the Senator from Texas, and I will explain a couple of reasons for that. First, there has been a suggestion to the States that did not receive their full share of funding, the fast growing States—California, Texas, Florida, Arizona, Colorado primarily—that there just was not enough money to be able to bring those States up to the same level as the other States.

There is an acknowledgment that a lot of other States get to the 95-cent level long before these five States do. That is the primary reason for the deficiency. In fact, as my colleagues can see from this chart, Arizona is in the dark blue, and we have simply selected a State—and I do not mean to pick on my colleagues from this particular State because there are others that reveal the same kind of thing—this happens to be the State of Missouri. We can see that beginning in the very first year, Missouri is returned 95 cents for every dollar. That is guaranteed to the State of Missouri all the way across from the very beginning. Whereas in my home State of Arizona, we are stuck at the current level of 90.5 cents in 2004, 2005, 2006, and 2007. It goes up one- or two-tenths of a percent in 2008. It is not until the sixth year, if the funding is available, that Arizona, as well as these other donor States that I mentioned, would be brought up to the same level that all the other States have been at all this time.

In the case of Arizona, the lost revenue during this period of time is about $160 million. So that is money Arizona would have received had it been treated the same as Missouri in terms of the 95 cents received per dollar.

The Senator from Oklahoma is quite right that when there are States that need more than a dollar, then there are going to be States that do not get a dollar for every dollar in taxes that they send in. That is, of course, true. Under the Federal system I think there is an acknowledgment that it is not totally unfair that some States are going to send more in in gasoline taxes than other States. When it is way out of balance and the balance can be corrected, it ought to be corrected.

The argument has been that it would simply have cost too much money to bring States such as Arizona up to this level. I think it would only cost $2 billion. In any event, the Senator from Texas distributes $9 billion over this period of time and makes these States whole.

One place that the $9 billion could have come from, had they wanted to, is the set-aside program in the committee-reported bill for something called the Infrastructure Performance and Management Program. The IPAM is a—I do not want to call it a slush fund but it is a source of funding that is very unclear about where it is going to be spent.

Very little is known about the purpose of such a program, although there are some who believe that it basically will be used to distribute to folks who vote for the bill and whose vote is needed for the bill and that the money, therefore, needs to be held in reserve in order to ensure that in the end they will have enough money to do all that they want to do. Why not use that money to bring the States such as Arizona, California, Texas, and those other States up to this 95-cent level? It is more than enough to do that.

So when they say there is not enough money to do what we are complaining needs to be done, that is simply incorrect. There is enough money. It just needs to be moved from this one program, which does not seem to have a very clear or fair purpose, and move it over to fund this deficiency.

I have just used the State of Arizona with another State that is somewhat comparable, in terms of size and so on, to illustrate the point, but I think the same can be demonstrated for the other States involved. That is why I support the amendment of the Senator from Texas because what it would do is restore this funding level so that from the very beginning all of the States would be treated the same.

Now, that can be done at whatever level of spending one wants to do it. I believe that the level of spending should be much less than the level in the bill. The President believes it should be much less than is in the bill. The President believes that the total amount should be $256 billion. That ought to be enough. That is a 21-percent increase. That is what I think. Whatever the level of spending in the bill, it should be fair as between the States.

Not all States can be treated exactly the same. We understand that. At least it is fair to have a base level. I will give credit to the chairman of the committee and others; they wanted to get this base level at 95 cents and they got there for most of the States but they did not get there for five or six of the States. My State happens to be one of them. It is not fair to the citizens of Arizona.

As a result, I support the amendment because it would bring this level up to 95 cents for the entire period of time we are talking about, not only in the very last year. I urge my colleagues to support fairness and to support the amendment of the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I, too, support the amendment of the senior Senator from Texas. As a member of the Environment and Public Works Committee, it has been my privilege to work with the Senator from Oklahoma as the chairman and the Senator from Vermont as the ranking member.

While admittedly I was not satisfied with the formula that came out of the

committee, based on my belief and the good faith of the chairman and others, we have been discussing ways that we could make this bill fairer to my State. The reason I support this amendment is because I believe it would do that—not just to the State of Texas but to also other what I would call superdonor States such as Florida, California, Arizona, Texas, Colorado, and Maryland.

As the Senator from Arizona says, it is a matter of fundamental fairness. Texas contributes a dollar to the gas tax and, all things considered, currently gets back about 88 cents on the dollar. In fact, I have had some of my legislators come to see me and say that our transportation needs are so great in Texas, given our size, given the 10-year lifespan of NAFTA, increased truck traffic on our highways, that we would just simply like to be able to keep that dollar in Texas, spend it on our own roads and not send it to Washington, DC, and have 10 or 12 cents taken off that dollar and the remainder simply sent back to us. I understand this is a national transportation system we are trying to take care of here. But I believe Texas, and I believe all of the superdonor States, the ones that contribute the lion's share for transportation needs in this country, are entitled to greater consideration than is currently reflected in the formula.

I think the senior Senator, Senator HUTCHISON, has come up with a good idea on how to do that, by using the $9.1 billion that is currently not distributed, which I understand remains in a discretionary spending account which can later be doled out. In other words, this will not add to the cost of this bill. It is money that is already figured into the bill but will simply be distributed according to the formula which she has already laid out, and which I think will not only result in greater fairness to my State but also to other States.

In the end, this does not just benefit the superdonor States—Florida, Maryland, Arizona, Texas, Colorado. Indeed, under this amendment every State would end up with more money, so I think every State would win.

If I can say a couple of more words, though, about the unusual posture of my State when it comes to the transportation dollars. As I mentioned earlier, NAFTA is a big consideration. Obviously, for the 10 years NAFTA has been in effect, it has resulted in tremendous increases in trade and benefits to Americans, to Mexicans, and to Canadians. It has raised the level of the water and all boats have risen. Because of the increased trade, more products from our country were bought in Mexico and Canada, and vice versa.

One of the things we are concerned about—we will have a hearing on it today in the Judiciary Committee—is our broken immigration system. One of the best ways I believe we can deal with the causes of illegal immigration is to increase trade with Mexico, for example, so the prosperity of that country will increase, jobs will increase, so people feel less and less need to immigrate illegally to this country to provide for their own families.

My point is this. Because of our proximity to the border, because we have a 1,200-mile border, because of the number of border crossings we have, Texas transportation infrastructure has simply borne a disproportionate amount of the burden, from which eventually all of the country benefits because of this increase in trade and truck traffic I mentioned a moment ago. As a matter of fairness to Arizona, which is in a similar situation, and Texas, our infrastructure has degenerated. It has been overused, in a sense. The public safety has suffered because we have simply been a donor State and have not been getting back enough of the gas tax dollar to help provide for our transportation needs in the State.

As I say, as a member of the Environment and Public Works Committee and the Transportation Subcommittee, I continue to hope—not just hope but also will work toward trying to make this bill acceptable and fair. It is certainly something I hope I will be able to support in the end. But I do think the proposal of the senior Senator, resulting as it will in a greater distribution of discretionary funds now into a formula that will then result in all States seeing an increase in transportation funds, is a step in the right direction.

Finally, I would like to allude for a moment to the comments of Senator KYL relative to the cost of this bill. I, too, believe in fiscal responsibility. I don't know ultimately how the Finance Committee will find a way to pay for this bill in its entirety. I think it is clear the President is not going to go for either a gas tax or for deficit spending. But should the overall amount of money be reduced from the current level to a lower level that would not require an increase in the gas tax or an increase in deficit spending, then my understanding is essentially the formulas we are looking at right now are out the window and we are going to have to look to ways to live within our means. But also, at the same time, we have to make sure this bill is fair to all States, particularly, I submit, the donor States that for a long time have paved roads and provided transit systems in other parts of the country from which the citizens of my State get no benefit. That is a matter of fundamental fairness we need to take care of. I believe this bill, with this amendment, would go a long way to doing just that.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mrs. HUTCHISON. Madam President, I hope very much our colleagues will also listen to the arguments against the second-degree amendment and for this amendment. I know the committee tried very hard to balance what they considered to be every State's wishes and needs, but they have made a major precedent-setting change in the business of the Senate by creating a new stepchild category for superdonor States.

They picked States that have other huge problems such as high growth and falling median incomes. Targeting these high-growth, large States that have huge infrastructure problems and other problems that go with being on the border with another country is a major step in the wrong direction.

I hope the chairman will reconsider. That is not likely right now, but we have been trying to work with the chairman to see if there could be some accommodation that would acknowledge the huge infrastructure needs of these superdonor States created in this bill. I hope the Senate does not do this in the end. In our amendment every State comes out better. It will create a more level playing field. The existing bill is not a level playing field by any stretch of the imagination.

We are trying to gradually raise the percentage that every State will be able to get when we are sending more to Washington than we receive in return. Our amendment simply assures that every State will get at least 91 cents back from what it sends to Washington next year; the year after that, 92 cents; the year after that, 93 cents; and the year after that, 94 cents, until all the donor States reach 95. It would be a gradual increase to 95. If we went to 95 immediately, it would deliver even more to Texas. We are not trying to do that. We are trying to enact a modest increase aimed at a more equitable donor status.

We will never get $1 back for what we send to Washington in this bill or in this environment. My hope, of course, is that at some point we will, that at some point other States will step up to the plate and say: We can bear our fair share and we do not need other States to pay our costs. That is not the case today.

This amendment is a measured approach. Every State gets more under this amendment. Alabama will receive $125 million more under this amendment than they would under the committee bill before the Senate; Alaska, $13 million; Arizona, $216 million; Arkansas, $84 million; California, $1.30 billion; Colorado, $178 million; Connecticut, $66 million; Delaware, $16 million; the District of Columbia, $7 million.

All of these are increases in what these States will receive under my amendment over 6 years: Florida, $481 million; Georgia, $288 million; Hawaii, $15 million; Idaho, $35 million; Illinois,

$460 million more; Indiana, $291 million more; Iowa, $120 million more; Kansas, $68 million more; Kentucky, $142 million more; Louisiana, $12 million more; Maine, $40 million more; Maryland, $164 million more. Massachusetts, $119 million more; Michigan, $337 million more; Minnesota, $217 million more; Mississippi, $96 million more; Missouri, $188 million more; Montana, $28 million more; Nebraska, $48 million more; Nevada, $64 million more; New Hampshire, $29 million more; and New Jersey, $265 million more.

Every State comes out better. It is more equitable and it takes out a lot of the politics. Senators who end up voting against my amendment think they will do better by divvying up a $9 billion pot into specific projects in their States, but all 100 Senators cannot come out winners that way. I would rather see us respond in a statesmanlike way, divide all of the money by formula, and give every State a more equitable portion. Every State will be helped and that is how our country should operate, with greater equity and a more level playing field.

I ask for the yeas and nays.

The PRESIDING OFFICER. What is the Senator seeking the yeas and nays on at this time?

Mrs. HUTCHISON. I seek the yeas and nays on my amendment, and I seek the yeas and nays on the second-degree amendment, as well.

The PRESIDING OFFICER. It is only in order at this time to ask for the yeas and nays on the second-degree amendment.

Mr. REID. Madam President, I ask unanimous consent that the Senate vote on her amendment. I believe it takes unanimous consent. And I ask for the yeas and nays, not a vote. I ask for the yeas and nays.

The PRESIDING OFFICER. Is the Senator seeking consent to request the yeas and nays on the first-degree amendment?

Mr. REID. The amendment offered by the Senator from Texas.

The PRESIDING OFFICER. Is there objection to it being in order to request the yeas and nays on that amendment at this time?

Without objection, the Senator may request the yeas and nays.

Mrs. HUTCHISON. Let me make a parliamentary inquiry. I was trying to get the yeas and nays on the underlying amendment, but I need the parliamentary way to get there, which I think both Senator REID and Senator INHOFE are trying to help do.

The PRESIDING OFFICER. Consent has been granted for the Senators to seek the yeas and nays. Does the Senator seek the yeas and nays?

Mrs. HUTCHISON. Madam President, I seek consent to ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays have been ordered on the first-degree amendment.

The Senator from Oklahoma.

Mr. INHOFE. Madam President, I ask the Senator from Texas, do you have others who want to speak on behalf of your amendment?

Mrs. HUTCHISON. No.

Mr. INHOFE. All right.

First of all, I recognize we are not objecting to a rollcall vote like some have been doing all week long.

I make a couple of comments about this because it has been inadvertently misrepresented. Let me talk a little bit about the States of Texas and Arizona. We have talked about this before. Arizona has a 40 percent growth rate, dramatically greater than the average, which is 35.6 percent. Arizona is comparable to Oklahoma in many ways. But Arizona actually gets $40 million more than my State of Oklahoma.

If we average that amount over TEA–21, it averaged $463 million. It goes up to $800 million at the end of this time and it reaches the donor status that is desired. In the State of Texas, the average over the 6-year period of TEA–21 was $2.1 million. It is the third highest growth rate in the Nation. It is the second highest amount of money, second only to California. It is part of the formula.

Let me say something about the formula. Everyone is deriding this formula. We went through the same thing 6 years ago. They did not like the formula because everyone wants to get something more than perhaps they are entitled to under any formula. That is human nature. We made a commitment, working on this formula for over a year, that we would stay with the formula. I am talking about a bipartisan bill, Democrats and Republicans on our committee.

When we looked at the factors—this is not just some States: let's see the big States and the little States and things like that—we covered a number of things: total lane miles on the interstate; the VMT, that is the vehicle miles traveled; the annual contributions to the highway trust fund attributed to commercial vehicles; the diesel fuel used on highways; the relative share of total cost to repair and replace deficient highway bridges—like in my State of Oklahoma, we are dead last in the Nation—weighted nonattainment and maintenance areas; rate of return of donor States, donee States, fast-growing States.

We have ceilings. We have floors. It is a very complicated formula. You don't come along at the eleventh hour and say, oh, we are going to change one thing and everyone is going to be happy because if you did that, then you are going to affect some other States in a way that is certainly not fair.

Now, let's just look at some of the arguments that have been made. The NAFTA corridor: Because of the insistence of one of the members of our committee, the junior Senator from Texas, Mr. CORNYN, we added $280 million—this goes to Texas—under the Borders Program. The IPAM Program, that has been ridiculed on the floor, is a program that takes projects that are ready for construction. These projects can start jobs immediately. You don't have to sit around and wait. That is why I am personally offended when people come along and say, well, let's have another extension. If we have another extension, none of this stuff gets done, none of the streamlining elements in this bill happen, which means we will not be able to do nearly as many roads per dollar as we can under this bill. That is why we are going to have, at the end of this thing, a 6-year bill. It is going to go to conference, and we are going to end up with a good bill. But we are not going to operate any longer on the extensions.

Now, I know there is politics involved in these things. We have tried to keep this at a minimum. If you look at TEA–21, it was dominated by the Northeastern States. You had several very important people on the committees.

Certainly, Congressman SHUSTER, over there from Pennsylvania—I served for 8 years with him on that House committee—and, yes, they got up to a very large amount in TEA–21: $1.21 return for every $1 they paid in.

Senator Moynihan—we all loved Senator Moynihan—he had a lot of influence on the committee. New York, as a result of that influence, I believe, got $1.25 back for every $1 they paid in.

Certainly, our beloved John Chafee from Rhode Island did his best work. They ended up with $2.16 for every $1 they paid in.

Montana—Senator BAUCUS was actually the ranking member of both the committee and the Subcommittee on Transportation and Infrastructure—$2.18. Now, there are reasons for this, of course, because they do not have a lot of people paying up there. But you have to have roads. You have to get through Montana. You have to get through the Western States.

My State of Oklahoma—and I was on the committee, and I was on the conference committee—90.5 cents.

We have done a job here in really helping people out. But I want to point out the most important part of this program. Everyone who stood up and talked about this new formula has talked about how everyone is going to get a little bit more. Let's stop and think about that. That is going to cost money, isn't it? I do not think there is a person who is supporting this bill who did not first come down to the floor and complain that we are spending too much money in this bill, that $255 billion is too much—and you add the transit on there—it is too much money.

This amendment will increase the cost of this bill by $7.25 billion. If you want to increase the cost, if you want to go tell the White House, ''No, we didn't like the $255 billion so we are going to raise it up to $262.25 billion,'' go ahead and do it. I don't think you would be very well received. The

money has to come from someplace. It is coming from IPAM. Quite frankly, I am not going to stand here and accept and support a change in the formula that increases the cost by $7.25 billion. It is totally unreasonable, and after a year we are not going to do it.

I say to the Senator, do you want me to yield for a question?

Mr. REID. I simply want to say, when the Senator finishes, we have been advised by leadership that they need a vote in the next 5 minutes. If we have more speakers, then I will have no alternative but to move to table. But what we have agreed to do, I say to the chairman of the committee, on this side, is to allow an up-or-down vote, but there will not be an up-or-down vote unless there is some acknowledgement that the debate is going to end now because we have spent considerable time on this amendment. It has been a good debate, but all things have to come to an end, and they will, either with a motion to table or an up-or-down vote now.

Mr. INHOFE. I am through, Madam President.

I want to reemphasize this amendment costs $7.25 billion more, and people have to understand that.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Thank you very much. I would direct, through the Chair, a question to the Senator from Texas.

Are you about to complete your statement?

Mrs. HUTCHISON. Yes.

Madam President, I would just like to take a couple minutes to respond to the chairman's remarks, and then I will be ready to vote.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, we are not adding money to the bill. We are taking money in the bill that is unallocated—promised but not yet granted to specific projects in specific States—and redistributing that on a fairer basis than that of political rewards in project money. We are trying to take the politics out and establish fairness for the States made superdonors, or stepchildren, in the Senate's highway bill.

I hope people will look beyond their pet projects and see that everyone benefits and the money used is already in the bill. The amendment does not add even a penny. Yet it creates a fairer planing field for every State already.

So I hope the Senate will rise above project fighting and distribute this funding on a formula basis in order to treat every State more fairly.

Madam President, when I came to the Senate, one thing that impressed me the most is that although I was a member of the minority party at the time, no State ever was ever penalized for size or growth. Every State was given funding that matched its needs.

This bill is setting a new precedent that has never been the policy of the Senate to use big States as providers for other States. Everyone can see this play is not fair.

I hope Senators will support this amendment. We are not adding a dime to the bill. We are redistributing the money that is in the bill in a fairer way. No one loses from the formula that is in the bill, and everyone gains much-needed funding.

I hope the bill does not go to the President without a formula amendment. It would set a terrible precedent to institute a new superdonor category of States with more highway mileage and therefore always paying more money to the highway trust fund than they will ever get back.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, we have discussed the formula, which is what the Senator from Texas has been discussing in the last couple minutes. I want everybody to know, this is 7.25 billion new dollars, new spending under this formula. If you vote for this, you are voting to increase the authorized level by $7.25 billion.

If you look at the pending bill, it says: Under the IPAM Program, under section 139 of that title, $2 billion for fiscal year 2004 and nothing thereafter. If you look at the amendment, it says:

> $2,000,000,000 for each of fiscal years 2004 and 2005. . . .

That is $4 billion, plus:

> $1,750,000,000 for each of fiscal years 2006, 2007, and 2008.

You add it up, and that is $9.25 billion, $7.25 billion more than the pending bill. Everyone has to understand that. When you vote for this, you are voting to increase the spending under this bill.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I echo what my good friend, the chairman of the committee, stated. The amendment does not keep the balance between donor and donee States. Our staff has run through many of these options, 300-plus runs from the Federal Highway Administration, to come up with a fair balance between donor and donee States.

When you take a look at what is fair, we have heard complaints about the increase, that they are not getting enough percentage increase, but when you look at the State of Texas, over the 6 years of the bill, it gets a 42-percent increase. That is $5.3 billion. If you look at the State of Arizona, it gets a 40.23-percent increase, or $1.11 billion over the 6 years. California has a 40.14-percent increase, or $6.1 billion. There are a couple of States that even get 40-percent increases. This amendment purports to increase fairness by giving an even greater share to some of the States that have the largest share of the increase already. That does not have much to do with fairness.

This is a very ill-advised amendment. As the chairman has pointed out, there is not money in the bill. This would add approximately $7 billion to the cost of the bill. I find it passing strange that some of the cosponsors of this bill were ones who opposed the Bond-Reid amendment to set the figure at $255 billion, and they have been very vocal in saying this bill spends too much. They would add about $7 billion to the bill.

We are going in the wrong direction. We are being asked to reward those States that are already doing better than almost any other State in terms of the increase in the money that is coming back. This bill followed the formula as best we could. We did get all States to increase by at least 10 percent. We got all donor States up to 95 cents on the dollar. But nobody, other than about two States, has made it up to a 40-percent increase.

To say certain States who are already in the 40-percent increase need more is unacceptable. I urge my colleagues to vote no on this amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I am going to move to table. We have waited. The time has come. We either have an up-or-down vote now or I am moving to table. I am not going to yield the floor anymore.

Mrs. HUTCHISON. Madam President, it is fine for the Senator to move to table.

Mr. REID. Madam President, I have the floor.

Mrs. HUTCHISON. There was a misrepresentation that just occurred.

Mr. REID. Madam President, I have the floor. I direct a question through the Chair to the Senator from Texas: Can we have an up-or-down vote? The leadership wanted one 5 minutes ago. We either do it now or I am moving to table.

Mrs. HUTCHISON. Madam President, misrepresentations have just been made. If the Senator feels he needs to cut off the ability to answer that, the Senator is perfectly free to do so.

Mr. REID. I ask the Senator from Texas, how much more time do you need to respond?

Mrs. HUTCHISON. If there are no further arguments that misrepresent the facts, I need 1 minute.

Mr. REID. I ask the Senator be yielded 1 minute prior to a vote on this matter.

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

Mrs. HUTCHISON. I thank the Senator from Nevada.

This bill came out of the committee with $9 billion in money that was unallocated. Now we are being told there is only $2 billion. It is a fair question to ask, where did the other $7 billion go?

The fact is, the money has not been allocated until we vote on this bill. We would have the ability to create a level playing field with the exact same money that is in the bill. It has not been voted on by the Senate. Where is the $7 billion?

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 2591, WITHDRAWN

Mr. INHOFE. First of all, the pending substitute has been available for 2½ days now. Everything is in there. We dropped IPAM down to $2 billion. You want to increase it to $9.25 billion. That is an increase of $7.25 billion. It has been down there. We all looked at the pending substitute. We read it. We have been debating it now for 2 days. It is an increase of 2.5.

Madam President, I withdraw my pending amendment so the Senator may have her up-or-down vote.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 2388

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2388 offered by the Senator from Texas.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

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

The result was announced—yeas 17, nays 78, as follows:

[Rollcall Vote No. 11 Leg.]

YEAS—17

Bayh	Feinstein	McCain
Boxer	Hutchison	Mikulski
Campbell	Kohl	Nelson (FL)
Cornyn	Kyl	Stabenow
Durbin	Levin	Sununu
Feingold	Lugar	

NAYS—78

Akaka	Daschle	Lieberman
Alexander	Dayton	Lincoln
Allard	DeWine	Lott
Allen	Dodd	McConnell
Baucus	Dole	Miller
Bennett	Domenici	Murkowski
Biden	Dorgan	Murray
Bingaman	Ensign	Nelson (NE)
Bond	Enzi	Nickles
Breaux	Fitzgerald	Pryor
Brownback	Frist	Reed
Bunning	Graham (SC)	Reid
Burns	Grassley	Roberts
Byrd	Gregg	Rockefeller
Cantwell	Hagel	Sarbanes
Carper	Harkin	Schumer
Chafee	Hatch	Sessions
Chambliss	Hollings	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Stevens
Collins	Johnson	Talent
Conrad	Kennedy	Thomas
Corzine	Landrieu	Voinovich
Craig	Lautenberg	Warner
Crapo	Leahy	Wyden

NOT VOTING—5

Edwards	Kerry	Specter
Graham (FL)	Santorum	

The amendment (No. 2388) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, yesterday Federal Reserve Chairman Alan Greenspan sent Congress what should be a much needed and sobering wake-up call. He warned that a lack of fiscal discipline could lead to increased long-term interest rates and called for new steps to restrain spending.

In delivering the Fed's monetary report to the House Financial Services Committee, Mr. Greenspan said that should investors become significantly more doubtful that the Congress will take the necessary fiscal measures, then appreciable backup in long-term interest rates is possible.

Also, as we know, yesterday the administration transmitted its statement of administrative policy which we will continue to talk about throughout this debate. We all know the projected budget deficit for 2005 is over $500 billion, half a trillion dollars. Almost every Member in this Chamber has been talking the talk about reining in spending, but when are we going to start to back up our words with our actions? Passage of this bill would be the quintessential example of what we are doing wrong and how we are not stepping up to future financial straits for our children and grandchildren.

The current budget resolution provided $231 billion for the EPW Committee to spend on its portion of the bill. That is the current budget resolution. The pending EPW proposal would instead provide $255 billion, or $24 billion over the current budget resolution by which we are to be abiding. The current budget resolution provided $37 billion for the Banking Committee to spend on its transit portion of this bill. The Banking Committee proposal contained in the pending bill provides $46 billion or 25 percent over the budget resolution.

I guess I have to ask a question about this body's adherence to the budget resolution. We spend arduous days, and then with a vote-athon that is the most unpleasant day and evening of the year—certainly for me and I believe for most of my colleagues—we come up with a budget resolution and one we at least commit to abide by.

This bill, at least in two instances which I am bringing to your attention, is $24 billion over the current budget resolution by EPW, and 25 percent or $9 billion over the budget resolution by the Banking Committee.

A few days ago, the Wall Street Journal editorial entitled ''Road Kill'' had some pretty harsh comments about what we are doing today. I will not quote from all of it. The Wall Street Journal editorial says:

An old political adage has it that the most dangerous place in Washington is between a Congressman and asphalt. That is exactly where taxpayers now find themselves as Congress conspires to pass another monster highway bill. The only good news is that President Bush is showing signs he may fight this election year.

The administration has its own highway proposal which is hardly cheap. Mr. Bush is asking for $256 billion over six years, which is 21 percent more than the past six years and fairly close to Treasury estimates of revenue from the current 18.4-cent-a-gallon federal gas tax that is earmarked for roads.

Ah, but this isn't enough for the boys of summer construction. The draft Senate bill demands $55 billion more than Mr. Bush and is loaded with fiscal gimmicks that divert money from general—non-gas-tax—revenues into roadbuilding.

One of the more embarrassing arguments from Congress's highwaymen is that this is somehow a ''jobs bill.''

That is what we continue to hear on this floor over and over again.

So at least for parochial matter, Republicans claim to believe in the superiority of government over private spending. Some Econ 101: Highway spending rolls out slowly over many years but new taxes are immediately taken away from the more productive private economy.

I would like to repeat that.

Highway spending rolls out slowly over many years but new taxes are immediately taken away from the more productive private economy. Still, this is a fight worth having. Congress will keep spending freely until Mr. Bush shows he's willing to spend political capital to say no. In a letter to Congress last week, Administration officials warned that any bill that includes higher gas taxes, trickster accounting or a siphoning of general tax revenues will face a veto. Presidents who make veto threats and don't fulfill them quickly come irrelevant.

There are one of two things that are going to happen and let's be very clear about what is happening. One of two things is going to happen.

No. 1, if we pass this bill, it goes to conference and the President of the United States makes good on his very specific veto threat. I am sure that will be of benefit to the President of the United States in showing he is willing to crack down on reckless fiscal insanity, which is really what this bill is all about, or, somehow, a bill is passed by both bodies and they go to conference and, without the participation of the majority of Members of the Senate, the bill will be pared down to the President's demands.

Either way, this bill is rendered meaningless. What we are arguing about is a meaningless 1,300-page piece of document because the President has assured us that, unless it is a certain level, far lower than the present level, he will veto it.

I don't know if the President has the votes to sustain his veto in this body, but I am confident the President has the number of votes to sustain his veto in the other body. Either way, my dear friends of the Senate cannot come out of this looking good because we are so far over in excess of what the President has guaranteed he would veto.

As my colleagues who are managing this bill keep saying: We will fix it in

conference. We will fix it in conference. The last time we fixed something in conference we got a Medicare prescription drug bill that, it turns out, was only $143 billion short.

I have seen things fixed in conference and there is nothing worse than seeing a piece of legislation ''fixed in conference.''

So we are arguing about a piece of legislation that cannot pass—that cannot pass, certainly at its present level, by a significant number of billions of dollars. We are in violation of our own budget resolution in this bill.

Therefore, I raise the point of order against the substitute amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Pursuant to section 904, I move to waive all Budget Act points of order for consideration of the pending substitute in its current status and the underlying bill as amended by the substitute.

The PRESIDING OFFICER. The motion to waive is debatable.

Mr. MCCAIN. Parliamentary inquiry: Doesn't it have to be sent to the desk?

The PRESIDING OFFICER. No, the motion does not have to be in writing.

Mr. MCCAIN. I ask for it to be sent to the desk.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I wish to debate the measure, waiving the Budget Act point of order. I would point out the chairman of the Commerce Committee, who has just spoken, is talking about the reckless fiscal insanity in this 1,300-page bill. A good portion of that is the Commerce Committee title, his committee's title. We don't know what is in that title.

We have laid out our bill. We have taken it through the committee. Our committee voted on it. We brought that bill to the floor. We have had it out here. We are still trying to find out what is in the Commerce Committee bill. We are told it is very different than what was passed out of the Commerce Committee. We have just tried to make an analysis of it and, as best we can tell, the budget resolution authorized the Commerce Committee to spend $4 billion and it appears the Commerce title before us spends about $6.5 billion. So we hope we could help the Commerce Committee by waiving the Budget Act point of order.

Let me talk a minute about why this vote is so important. The vote is on two very important issues. The first is the size of the highway bill—$255 billion for highways, $56 billion for transit. The second is firewalls ensure highway trust fund dollars are spent on this Nation's transportation needs. Last year, during consideration of the budget resolution, the Senate voted 79 to 21 in favor of funding the highway bill at $255 billion, and mass transit at $57 billion. That vote seemed to me to be a resounding victory for adequate funding levels for these two very important subjects.

The administration's proposed bill would fund highways at under $200 billion over the next 6 years, and to cut that would cut $4.5 billion. Furthermore, the highway funding would not reach the level included in the 2004 Omnibus bill until 2008, the second-to-last year of the bill. This would result in a net loss of 850,000 jobs compared to the CBO baseline, because that is how far the level would fall under that which the House-Senate budget resolution authorized.

The funding levels in this Senate transportation bill are responsible. When the budget was adopted there was a provision in there saying the level for highways would be $231 billion unless other funds could be put into the highway trust fund.

I commend the Senate Finance Committee, Chairman GRASSLEY, and Ranking Member BAUCUS, who have taken steps to ensure that they have closed loopholes; they have directed into the highway fund new highway fund measures, and as a result, according to the Finance Committee, this bill will not add to the deficit. Now, in fact, not only will this bill not add to the deficit, it will be a huge economic stimulus. Everyone knows $1 billion invested in transportation infrastructure creates 47,500 new jobs.

In addition, in the last year for which we have statistics available, over 42,000 Americans lost their lives on our Nation's roadways in motor vehicle accidents. Roughly 35 percent, or 14,000, of these are a result of road conditions. It is likely our State may be higher than 35 percent because we have many narrow, two-lane roads, with far more traffic than we have highway to accommodate. In other words, if you have 15,000 cars a day using a two-lane, two-way road, people try to pass at times that are not appropriate, and many other risks are taken by drivers with a result that there are head-on collisions and traffic fatalities.

This is a safety measure. The figures we have are figures that match the initial representations, the initial 79–Member vote in this body. The additional funding above the House-Senate joint resolution is achieved because the Finance Committee put additional funds into the highway trust fund. That is a very sound way of going about it. I urge my colleagues to support the Budget Act waiver.

The Senator from Arizona also raised questions about why we are going to write it in the conference. We have been in touch with the White House and just learned after the bill had been brought to the Senate they were reluctant to accept the figure we had. At this point we need to work with the House and the White House to come up with a final figure.

I cannot imagine anyone thinking a bill we pass out of here, which has so many different interests, will not be changed when it comes back from the conference with the House. We are not the only body. I have worked on a lot of conference reports and if it comes back looking very much like what we pass out of the Senate we have done a good day's work. I have never seen it come back looking exactly the way it left the Senate. That is how this place works. We have to have compromise when we go to the conference committee between the House and the Senate. When the White House feels strongly about it, they have a great say because they have the final say. They have the final say whether it is signed or vetoed.

We have worked too long and too hard to get a good bill. The chairman, the Senator from Oklahoma, the distinguished ranking members, the Senator from Vermont, the Senator from Nevada and the members of the committee, worked on the EPW portion. The other portions have been worked on in their committees. We will do the best we can to follow the outlines we have and come up with our proposal.

We should remind those who criticize this measure, who say they want to know more about it, that we marked up our bill before Congress recessed for Christmas and have used the base text throughout this entire process. For the past 2 weeks, we have consistently urged our colleagues to come to the Senate and offer amendments. Our staff, my staff, the other principal staffs, have been here late every night. We announced last week that the staff was available to discuss amendments throughout the week. Many Members took advantage of it. We tried hard to be open and accommodating to every Senator. That is why it is extremely frustrating to be criticized by Members who have never come to the floor to offer an amendment, let alone send their staff to meet with the EPW Committee staff to discuss changes or to offer amendments for consideration.

Even more frustrating, the fact that rather than offering suggestions or amendments, we are criticized for deficit spending. I remind my colleagues, the point of order was raised by a colleague who cosponsored an amendment we defeated this morning that would add $7 billion to the cost of the bill. It would add more to his State and several other States. It is beyond what is paid for in the bill. It is beyond what is available in the bill.

There has to be some consistency. People say consistency is the bugaboo of small minds, but when we take a look at budget numbers, we ought to be making adjustments in the numbers based on what is available.

Second, when we are criticized for not being open with our bill, I urge the chairman of the Commerce Committee to bring his substitute for the committee bill to the floor to discuss it, to let us know what is in it so we might make meaningful suggestions and directions.

As I said, we have not been able to review it in detail. It is not the same

title as reported out of the Commerce Committee. That Commerce Committee bill which had allocated $4 billion under the budget resolution came in at over $6 billion.

Mr. GREGG. Will the Senator yield?

Mr. BOND. I will yield in a moment. I want to conclude my comments.

I urge my colleagues to waive the provisions of the Budget Act as outlined in the motion to waive previously submitted.

I yield the floor.

Mr. GREGG. Will the Senator yield for a question before he yields the floor?

Mr. BOND. Certainly.

Mr. GREGG. If the Senator could state—since he is moving to waive the Budget Act because the bill exceeds the budget—in his opinion, what dollar amount does this bill exceed the budget?

Mr. BOND. The original proposal in the bill agreed on by the budget conference committee between the House and the Senate was below the Senate number. It came in at $231 billion.

The Finance Committee has fulfilled its obligation to raise enough funds in the highway trust fund to enable us to reach the level of $255 billion, the amount originally adopted by a 79-to-21 vote in the Senate. Rather than argue about that detail and the other details, I want to put the measure to waive that and we can debate the Finance Committee and other questions as they arise.

Mr. GREGG. If the Senator will yield further for a question, that was not necessarily my question. My question was fairly specific. If you accept the number $255 billion as the number you are working from as the budget number that would be defensible, by what amount does this bill exceed the $255 billion number? What is the specific amount?

I presume as one of the managers of the bill that the manager must know that number.

Mr. BOND. I suggest that my colleague ask the Commerce Committee chairman by how much his title exceeds the budget resolution. I believe our number is at $255 billion. I want to help out the Commerce Committee by getting a waiver for what I understand—I cannot be sure—is a 50-percent increase over the budget allowed to the Commerce Committee.

Mr. GREGG. Mr. President, if the Senator will yield further, is the Senator's position that this bill does not exceed the budget, and therefore, if that is the Senator's position, why would the Senator be asking for a waiver of the budget?

Mr. BOND. Mr. President, to answer my colleague, it appears that the Commerce Committee is over the limit and we are going to have this vote at some point. This is a good time to have it. There will be questions raised about the Budget Act. My understanding is that the Commerce Committee is over its $4 billion allocation.

Mr. MCCAIN. I would like to respond to the Senator from New Hampshire.

Mr. GREGG. Mr. President, I believe I have the floor and I am happy to yield for a question to the Senator.

Mr. MCCAIN. Is the Senator aware that the EPW portion is over, by $24 billion, the budget resolution? The Commerce Committee is over by $2.5 billion. The reason it is over by $2.5 billion is because of administration requests. But I would be more than happy and would vote for removing the $2.5 billion which the Commerce Committee is over and the $24 billion that Environment and Public Works is over. That, it seems to me, would be fair.

Again, I hope the Senator from Missouri would look at the substitute that contains the Commerce Committee's input in title IV. The Senator from Missouri keeps claiming that the Commerce Committee is not in there. Look at title IV of the substitute, I say to the Senator from Missouri, and then you will find out what the Commerce Committee is. I am astonished he does not even know what is in his own substitute.

Mr. GREGG. Mr. President, I appreciate that question from the Senator from Arizona and that answer, both of which were excellent, by the way. I am glad somebody around here—who is not necessarily a member of the committee bringing the bill to the floor—knows the number by which the bill exceeds the budget. I do think that is sort of an elementary item you might want to know when you bring a bill to the floor of the Senate, by what amount do you exceed the budget, especially when you ask to waive the budget.

The Senator from Arizona has answered that question. The bill exceeds the budget by somewhere in the vicinity of $24 billion, I believe was the Senator's statement, on the EPW side, and $2-something billion on the Commerce side. I am not quite sure why we should be waiving the budget on that size number. That is a big number: $24 billion.

Mr. BOND. Mr. President, would the Senator yield for a question?

Mr. GREGG. I would be interested in getting an answer first from the Senator from Missouri, who refused to answer my prior questions with any specificity, before I yield for a question. I will complete my statement and then yield.

Mr. BOND. All right.

Mr. GREGG. The point is, we see a bill which has been brought to us which is dramatically over—dramatically over—the number which was proposed by the President, and then the number that was passed by this House as a budget number, and now, when there is an attempt to bring some fiscal discipline to the bill, we see the committee come forward and say, well, we don't know how much we are over or we are not going to tell you how much we are over, but we want to waive the budget.

At what point does fiscal discipline enter any of the discussion around this Senate? It appears to have become a fantasy land for the purposes of spending, and it is unfortunate because who is going to be paying this bill? Well, it is going to come out of the general fund, which means it will be added to the debt, which means that our children are going to pay for it.

Now, there are ways to fund a highway bill that are appropriate, and it is called going to the highway fund and using the money in the highway fund. This proposal, as it came out of the Budget Committee, as it was presented by the President, represented a 19-percent increase in funding, using dedicated funds. It was a very reasonable approach. But the bill, as it is on the Senate floor today, represents something in the vicinity of a 40-percent increase in cost, and it is not paid for with highway funds. It is paid for by borrowing from the general fund, which means running up the debt, and that is inappropriate.

So the Senator from Arizona has raised a very legitimate point, which is that this bill violates the budget. Then, when he asked and I asked the manager of the bill by how much, they could not answer the question, or they would not answer the question, which is ironic and maybe reflects either their lack of knowledge of the bill or their lack of desire to tell us what the number is.

Now, the Senator from Arizona has put a number on the table. He believes this is $24 billion over the budget. That is a lot of money—a lot of money. I think the Senator is probably right. I certainly cannot understand why we would be waiving the Budget Act when we have those types of dollars being added to the deficit, when the deficit has already ballooned beyond what anybody should reasonably expect a disciplined government would be running.

Mr. President, I have a list of just how much this bill has gone up, and I will put it in the RECORD. I ask unanimous consent that this list be printed in the RECORD.

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

TRANSPORTATION PROPOSALS RAW NUMBERS

	In billions
(1) TEA-21's Total Cost 1998–2003	$218
Highways	$167
Transit	$41
Safety, Motor Carrier Adm	$10
(2) Straight 6-Year Extension (6 years @ FY03 Funding level of $40.5 million.	$243.4
Highways	$190.8
Transit	$49.2
Safety, Motor Carrier Adm	$3.4
(3) Administration Proposal	$248
Highways	$195
Transit	$50
Safety, Motor Carrier Adm	$3
(4) "SAFE TEA"—EPW's S. 1072	$318.5
Highways	$255 (w/Finance additions)
Transit	$56.5
Safety, Motor Carrier Adm	$7
(5) TEA-LU: House Bill	$375 (w/o Safety Money)
Highways	$293
Transit	$82
Safety, Motor Carrier Adm	Amount not clear at this point

House bill has yet to be marked up. Young is now negotiating w/ Thomas who intends to mark up a $318 billion proposal in Ways and

Means that is very close to Inhofe's Senate bill.

Mr. GREGG. The TEA–21 total cost for 1998 to 2003 was a $218 billion bill. That included highways at $167 billion, transit at $41 billion, and safety and motor carriers at $10 billion.

A straight 6-year extension of that would have been a $243 billion bill, with highways at $190 billion, transit at $49 billion, and safety and motor carriers at $3.4 billion.

The administration's proposal was originally a $248 billion bill, with highways at $195 billion.

SAFETEA, which is what is on the floor now, is a $318 billion bill, with highways at $255 billion, transit at $56 billion, and safety and motor carriers at $7 billion.

The House, which is talking about marking up its own bill, is at $375 billion allegedly, with highways at $293 billion, transit at $82 billion—and it is not really clear yet what the safety and motor carrier number is, but it is pretty obvious if the House is over our number as we are taking this bill up on the floor, we are not talking about a conference that is going to come back to the budget number. So our one opportunity to enforce the budget, to have fiscal discipline, and to not significantly aggravate the deficit is this vote that is going to come up on the issue of waiving the budget.

I certainly hope we will stand with the Senator from Arizona as he tries to enforce some fiscal discipline on this bill which, remember, if the budget number is put in place on this bill, it will be a 19-percent increase. We are not talking about cutting spending.

We are talking about cutting spending in a lot of accounts. The President has sent up a freeze budget for domestic, nondefense, and nonnational security issues, so we are going to have to cut some spending around here. This bill is not going to cut spending. If it meets the budget, it is going to be up 19 percent. So it is not like we are asking people to take a hit or to reduce highway construction. In fact, highway construction will increase considerably if we go forward with a bill which is within the budget, and it will also be responsible, which is the key to this exercise.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The junior Senator from Arizona.

Mr. KYL. Mr. President, I think my colleague from Arizona makes a valid point of order. And as the Senator from New Hampshire has just pointed out, the bill clearly exceeds the budget; therefore, a budget point of order is valid and should be supported by the Members of this body. For those who would vote against the budget point of order, they are in effect saying: Throw the budget to the wind; we want to spend more money than is authorized; and we are going to do that.

The response from our side, those people who wish we would stick with the budget, is to vote to sustain the budget point of order so that we can at least try to keep within the bounds we ourselves have set.

The rejoinder of our colleagues who oppose sticking to the budget is: We will fix the bill in conference. But they are never willing to commit they will bring a bill out of conference that does not violate the budget.

That is our problem. That is why we cannot accept the proposition from our colleagues that we will just pass this bill, that it is all going to somehow magically get fixed in the conference. There have been no commitments made that the bill that comes out of conference will be consistent with the budget. This is why the President has also expressed concerns.

In the Statement of Administration Policy, after noting the fact that the bill pending before us is $62 billion above the President's request—which was for $256 billion—the letter reads as follows:

> The Administration's proposed authorization level of $256 billion over six years is consistent with the three principles listed above.

And those are the principles that have been read before that called for a bill which does not raise taxes, which does not use smoke and mirrors, and which does not take money from the general fund to pay for the highways.

The letter goes on to say:

> We support a reasonable [responsible] six-year bill and support many of the provisions contained in this legislation. However, we oppose S. 1072 and the pending substitute because their spending levels are too high and they violate these principles discussed above. Accordingly, if legislation that violates these principles (such as this legislation, which authorizes $318 billion) were presented to the President, his senior advisors would recommend that he veto the bill.

If we sustain the budget point of order that has been raised by my colleague from Arizona, we will go a long way toward meeting what the President has asked us to do: to stick within the limits that he set and that we set. If, on the other hand, we support the motion to waive the Budget Act of the Senator from Missouri, we have basically said we are not yet prepared to face up to fiscal realities. We are not prepared to show we are going to be fiscally responsible. But trust us, when we get to conference, we might or might not be doing something to bring us back into fiscal balance.

For those reasons, I urge my colleagues to support the budget point of order raised by the Senator from Arizona and to oppose the motion to waive all budget points of order offered by the Senator from Missouri.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I erred on a matter of decorum. I said I would yield to the Senator from Missouri for a question. Unfortunately, I failed to do that. If the Senator from Missouri did have a question, I apologize. He has probably forgotten his question by now. It was a long time ago. I am sure it was going to be a telling question, so it was best that I wait anyway.

Mr. BOND. Mr. President, to answer the question once more, he said how much was it over the budget. As to the original budget passed by this body, it is right at the budget, 255. How much is it over the joint House-Senate budget? It is $24 billion over, but that Budget Act specifically said additional money put in the highway trust fund can be used for trust fund purposes. That is what we have done. The reason we asked to waive the Budget Act points of order is so we can stop the dilatory tactics that have dragged this out without getting a vote for almost 2 weeks.

I would ask the Senator from New Hampshire if he intends to continue to delay, to attempt to prevent votes on the substantive amendments which may be brought to the bill. If he could give us some assurance that he will not continue to use dilatory tactics and raise points of order, should we not waive the budget?

Mr. GREGG. Mr. President, I knew the question was going to be a good one. Let me point out that I offered an amendment 2 weeks ago. I was ready to vote on it at any time over those 2 weeks. It is hardly my dilatory tactics that kept us from going to a vote on that amendment. In fact, it was the manager of the bill who decided to take a parliamentary move which brought down my amendment and made it impossible for me to get to a vote. Why would it be dilatory on my part that the managers brought down my amendment without allowing me a vote?

I guess I would turn the question back to the manager. Is the manager at this point willing to vote on my amendment? In fact, I ask unanimous consent to be allowed to bring forward, recognizing that it is not germane at this time because the manager has positioned the bill so it is not allowed to be voted on, but I ask unanimous consent at this point, because the managers asked for a vote, that I be given a vote on my amendment, which was the amendment dealing with collective bargaining which was pending for a week and a half in this body and on which I was not given a vote.

The PRESIDING OFFICER. Is there objection?

Mr. BOND. Mr. President, we object. It is not a germane amendment. That was the problem.

The PRESIDING OFFICER. Objection is heard.

Mr. GREGG. Mr. President, I think that answers the question. It is not I who has not asked for votes. It is not I who has been dilatory. I have been aggressively pursuing a desire to vote on that very reasonable amendment for a considerable amount of time. I do not wish to waive my rights to maybe raise that issue at some point in the future.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, since the Senator from Missouri is on the Senate floor, I draw his attention to the index of his own substitute which has the commerce provisions of the bill in it in title IV. I wish he would ask to strike his comments if he doesn't know what the Commerce Committee is. I guess I shouldn't be surprised, but I am a little surprised that he doesn't know what is in his own substitute.

The Senate Budget Committee staff tells us that EPW is $24 billion over the budget; Banking, $9 billion over the budget; Commerce, $2.5 billion over the budget—I would be more than happy to erase all of those—for a total of $35.5 billion over the budget. Meanwhile, everybody in America is warning us about running up these huge deficits. The President of the United States, the administration's proposed authorization level was $262 billion on highways and highway safety, $50 billion over the President's request; $56 billion on mass transit, $12 billion over the President's request. In total, the Senate bill authorizes $318 billion in spending on highway safety and mass transit over the next 6 years, a full $62 billion above the President's request for the same period.

The President has guaranteed a veto. He has guaranteed a veto if we go on with this number which the managers of the bill continue to stoutly defend. King Canute had a better idea.

I hope my colleagues will vote to support the point of order which was raised against the Budget Act.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I believe many questions were raised about financing. I see the Senator from Iowa, the chairman of the Finance Committee, in the Chamber. I will just note that he could answer those questions, if he is recognized.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I want to make a couple comments about the bill in general and spending.

We are debating whether to waive the budget point of order. There is a point of order in order simply because this transportation bill goes way over—tens of billions of dollars over—what we voted on as a body and agreed to last year. That is why a budget point of order stands against this bill.

Transportation spending is one of the most legitimate uses of government dollars. Everybody benefits by it. I don't think there is any question. Anybody you talk to agrees it is a legitimate use of dollars. But there are people who want to go above the budget, who want to spend more than the trust fund brings in. The trust fund is that money that comes in because of user fee taxes paid into a fund that are supposed to build our roads and the like, the rest of the infrastructure.

Instead of putting this tax on our children or on the next Congress because we are deficit spending and passing debt, when you pass debt on to the future, you are going to have to raise taxes in the future. We have seen Congress doesn't cut spending. So because you are passing taxes on to the future, the people who want a higher highway spending bill should have the courage to raise the taxes. I don't believe we should. But if those people want to spend more money, they should at least have the courage not to put it off to the next Congress to raise taxes. That is why this point of order should be sustained.

To put this in the context of the economy and other spending, they are touting the jobs that will be created. Alan Greenspan testified that the biggest threat to our economy and to jobs is runaway Federal spending. The markets are watching us right now. Whether somebody is a supply side economist or a Keynesian economist, it doesn't matter what view they take, the one thing they will all agree on—whatever causes the deficit, they may disagree—is the deficit is a huge threat to the future growth of our economy and jobs in America. And they are all watching us right now. The markets are watching; the Federal Reserve is watching what we are going to do on this very bill right now. That is why it is so critical we exercise some fiscal discipline on such an important issue.

It will help us all by voting for more transportation spending; it helps us all for reelection. That is why this bill is so popular. We politicians can get up here and tout how much money is coming to our States; it is going to help you for reelection. But we have to think about not just our parochial interests in our States but put that into the broader context of the overall economy and also in the context of what we are doing to future generations.

If we keep deficit spending, we are putting taxes on to the future generations. We did the farm bill, the Medicare prescription drug bill, this transportation bill—we have passed so many things, plus all of the other discretionary accounts, on top of a war. And Americans understand that sometimes you have to deficit spend during recession and war. But we are out of the recession now. The war is still there, so we have that aspect of it. But to continue to add to the deficit with all of this other discretionary spending and going above the trust fund I think is wrong.

That is why I call on colleagues, if they really want the $311 billion, or whatever the spending amount is they come up to, not to play games, not do this shadow game being done with a lot of the numbers.

I appreciate what the chairman of the Finance Committee has tried to do. He was given a task and he has done the best he possibly could. I think too many games have been played. We ought to be honest. If we want to spin that number and if people want that number, they ought to vote for a gasoline tax increase to pay for it. That should be the only way we do this.

Mr. President, I will conclude my remarks by saying I hope we act in a more fiscally responsible way than we are doing within this bill. I am applauding the President for putting his foot down and saying enough is enough. We have to get our fiscal house in order.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I spoke, similar to what I am going to say today, last week on the floor of the Senate because I heard these very same considerations and very same criticisms of the Senate Finance Committee bill at that particular time. And at that particular time, I thought for Senators who don't have time to read legislation, or be advised by their committees or by their staffs on what the committee might be trying to accomplish—I ought to take time to inform colleagues about what my committee actually did.

I can tell by the debate today that either no one was paying any attention to my explanation last week or they forgot or they didn't care, because I am hearing the same criticism this week. I want to state why that criticism is unfounded, and I want to say to my colleagues that what we are doing in this legislation is following precedent and making sure that money that ought to be in the trust fund is in fact in the trust fund, and that any sort of exemption we have is to make all those exemptions and/or subsidies perfectly consistent.

I have found the unfounded criticism of the legislation that has come out of my committee falling into two categories: First, the general fund money is going into the trust fund. In other words, nonroad-related money is going into the road fund and the highway fund, the trust fund, the transportation fund, whatever you might want to call it. Second, the Senate Finance Committee has made changes that are in fact not legitimate changes but are gimmicks.

Let me respond to those. This response is not much different from what I would have stated last week. In response to the argument that general fund money is going into the trust fund, under the Finance Committee amendment no general revenue is transferred to the highway trust fund. We keep hearing this incorrect allegation. I encourage the critics to read the Finance Committee title of the transportation bill.

Under the Finance Committee amendment, the highway trust fund will retain more excise taxes. It is not general fund revenue. That is excise taxes. And excise taxes go into this trust fund. We accomplish this by eliminating the partial exemption for ethanol-blended fuel. Ethanol-blended fuel users will now pay the full excise tax and the trust fund will receive the

money. The benefit will be taken as a tax credit against the general fund. And just to verify that this is a totally consistent policy, this is exactly as all other energy production incentives are handled.

Likewise, the trust fund, as a second source of revenue, will retain the excise taxes collected from certain users, such as exemptions that are given to State and local governments. Those vehicles use our highways, use our transportation systems; should they not be paying taxes? Should that money not be going into the road fund?

Under the Finance Committee amendment, the refund is not charged to the highway trust fund, so that every mile that a city of Des Moines vehicle puts on, that money would go into the road fund, just like the gas tax I pay for the car I drive on the highways in the State of Iowa.

Again, this means, then, that the trust fund retains more of the excise taxes. So let's be clear. The Finance Committee amendment does not transfer general revenue to the trust fund.

The second argument is that we have used accounting gimmicks. We hear the allegations that the Finance Committee is doing this many times on the floor of the Senate. It is an unfair, incorrect allegation. What the Finance Committee did in our amendment to this transportation bill was to ensure that the trust fund keeps more of excise taxes that should actually be in the trust fund and should be spent on our transportation system.

The Finance Committee also recognized that the trust fund should earn interest on its balance. You know, just like we are telling our senior citizens all the time, that surplus in the Social Security payroll taxes coming in, that is not being paid out currently, is invested in Treasury bonds. The interest on that is accumulated and accounted to the Social Security trust fund. So doesn't it make sense to ensure that any surplus in the transportation fund—and there must be some surplus to cover shortages after September 11 when people didn't drive as much and not as much road tax money was coming in—for items beyond what we can plan for needs to be accounted? That surplus then earns interest. That hasn't been accounted for in the highway fund. It now will be. These changes align trust fund receipts with spending purposes.

There are policy initiatives that burden the highway trust fund that have nothing to do with highway policy. We are going to unburden the highway fund. These policy initiatives have, in fact, reduced highway trust fund receipts, money that should have been available to build highways, not available because of exemptions. We accommodate those exemptions. Accommodating an exemption, consistent with good accounting practices, is not a gimmick.

The effect is that these policy initiatives are carried in the general fund where they belong. I heard one of my colleagues'—Senator MCCAIN—harsh criticism of the Finance Committee. Senator MCCAIN's committee, the Commerce Committee, approved new spending of $7 billion in its programs. The Finance Committee didn't question the Commerce Committee's needs and, without reservation, the Finance Committee found a way to fund the needs of this specific committee doing their legitimate work.

The Senator from Arizona legitimately put a burden on the Finance Committee, and we accepted that responsibility within our jurisdiction, within our power, within our responsibility. We bore the Commerce Committee's burden.

Now, after doing their work, the Finance Committee is criticized for what it did. It is easy to put burdens on others. It is easy to criticize those who did the heavy lifting. It is a lot harder to find ways to do the heavy lifting. But that is not their responsibility. They did what they needed to do under the responsibilities of that committee for this transportation bill. I find no fault with what they have done, and I assumed the responsibility as chairman of the Finance Committee, working with my 20 members, to make sure the money was available.

This isn't just because that is something I assumed. This is something that last summer the leader of the Senate, Senator FRIST, asked us to do. He got members of the Commerce Committee, the Banking Committee, the Finance Committee, and the Environment and Public Works Committee together and said that we needed to find something, a common ground we could agree on or he didn't want to bring this bill to the floor. That was last summer.

We didn't have time last year to get it done. We extended it until February 29, but as far as I know, that same collegial assumption of responsibility to produce good transportation policy is still in effect. The three committees decided what those programs should be and the Finance Committee, the committee I chair, met our responsibilities.

Let's deal with reality for a second. As the cloture vote shows, the will of the Senate is to provide resources at the levels provided by these three authorizing committees. The Finance Committee did the job and provided funding at the outlay level. The Finance Committee preserved its role by maintaining the importance of the trust fund.

A week ago, I spoke to these points. I asked the critics, in light of where the Senate was on the numbers, how would you fix it? We have a few vocal people throwing rocks at this bill. None of the rock throwers have accepted my challenge and answered the challenge. What would you do and have it be sustained by the Senate, particularly, as I stated last week and I haven't said yet this week, when we did have that vote of 79 to 21 last year where there was a clear decision made by the Senate to spend a lot more money on transportation.

I was one of the 21 who felt we should not go that far, but how are you going to argue with the Senate making a decision, with only 21 dissenting votes, that the Senate is wrong? I still may think they are wrong, but that doesn't change my responsibility to provide the revenue to meet the needs of the three committees, and I assumed that responsibility. That is what we have done.

It is easy to criticize. It is a lot harder to legislate and do the people's business, and that people's business I think is represented by that 79-to-21 vote last year and by the work of the three authorizing committees—the Environment and Public Works Committee, the Banking Committee, and the Commerce Committee—on how much money needs to be spent. It falls on my shoulders to do it. I have done it in a way that is consistent with the way excise tax money ought to be handled. It is done in a way that any subsidy the Congress thinks ought to be established is done. What do you want me to do? Last week I said if you don't like what we did, I am open to suggestion.

I have one promise that I made to my committee, in the meantime, about the package that is before us. We followed the same policy that we did in the tax bill of 2001, and that was to make some changes in the payment of the corporate tax so that we would have a revenue-neutral bill coming before the committee. At least the leaders of the Budget Committee asked me and Senator BAUCUS during our committee's deliberation to not use that source of revenue, and we are committed to responding to that request. Beyond that, I think the bill voted out of the committee stands, and it is one that meets our responsibility to the Senate, to the leader who asked the four committees to work together, to the transportation needs of our Nation, and, most importantly, in this body doing something in a bipartisan way which, if it isn't done, this body does not have a product for the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, in my view—and I think it is the view of the vast majority of the Members of the Senate and probably the majority of Americans—this highway legislation is critical. It needs passing immediately. It is critical because our country so much depends upon our highways. The past highway legislation spent a good amount of money to help repair our roads, provide for new roads, bridges, and safety. We know the importance of our infrastructure system.

This bill expired. We are now in an extension period. Because it expired, we desperately need to pass replacement legislation.

It is also a jobs bill. This is a no-brainer. If we have lost—and nobody

disputes this figure—a couple to 3 million jobs in this country in the last couple of years, we need to pass a bill that creates and provides jobs. That is a highway bill. It does not take much brain power to figure that one out.

I urge our colleagues to get on with it and pass highway legislation. We should not let perfection be the enemy of the good. There may be one or two points—and they are not big points—that individual Senators may want to have in this bill, but we should not let that get in the way. We should pass this legislation.

There are some Senators who say, oh, my gosh, this breaks the bank; it spends too much money. Respectfully, our President has suggested this is too expensive and spends too much money. There is even talk of a potential veto. Well, I doubt seriously that the President of the United States is going to veto this jobs bill. It just is not going to happen. First, the President has not vetoed any bill in his Presidency—none. I doubt that his first veto would be the highway bill, a jobs bill.

Also, importantly, this bill does not increase the debt. It does not increase the deficit. All of the revenue that will be spent for highways is already paid for, except for a small portion of general revenue that goes to pay for a portion of mass transit, but that was in the budget resolution, and the budget resolution with respect to highways does not increase our debt.

I urge my colleagues to think very carefully about that because for those who say it breaks the bank, that is just not accurate. This bill does not do that. I might say, in my State of Montana, this is our jobs bill, this is our economic development bill. This creates and maintains about 17,000 jobs in our State. We are a highway State. We do not have a lot of people in our State compared to others and we have great distances to travel, but we would like to have a highway program that enables us to get around in our State.

That is probably true for all of these folks from all around the country who come and visit Montana. They like to be able to travel on roads that do not have potholes. They want to be able to travel to various resorts in Montana to go skiing in the winter and backpacking and fishing, fly fishing, in the summer. My colleagues would be amazed the number of people I meet who tell me they come to Montana, especially in the summers, to go fishing and just have a good vacation. They want the same highways in Montana that they will find in other States of the Nation.

I just cannot say too strongly how much we need this legislation. I might say, too, this has been a product of bipartisanship, which is so important. We all know that most anything of consequence that gets passed in the Senate is passed only when we work together, Republicans, Democrats, House and Senate. That is this bill. That is this legislation.

I take my hat off to the chairman of the EPW Committee, Senator INHOFE, and to the ranking member, Senator JEFFORDS, who worked very closely together.

I might also say that the money for this bill has to be authorized by the Finance Committee. That is the committee of which I am the ranking member, and the chairman of our committee just spoke preceding me. We have all worked together, all four of us, on a bipartisan basis to get a good highway bill passed. That is the only way we can do legislation, in my view.

The bill also corrects two mistakes. One of them currently—there are a lot of them, but a lot of the money now that goes to the general fund should go to the highway trust fund. For example, interest on the highway trust fund currently goes to the general fund. Well, that does not make any sense. It is interest on the highway trust fund. It should go to the highway program. That is a no-brainer. The same with the ethanol subsidy. There is a 2.5 percent deduction from the ethanol portion of the highway users tax that goes to general revenue. That does not make any sense. Folks who drive cars powered by gasohol drive on highways just like people who drive cars powered by an ordinary gas engine. It seems to me that for anybody who drives on the highway, the excise and gasoline taxes they pay should go to the highway trust fund. A portion of it should not go over to the general revenue. The Finance Committee fixed that and there are some other changes as well.

To summarize, this is a good bill. It is needed. I urge my colleagues to pass it very quickly. The cloture vote was very reassuring. I think only 11 Senators voted against cloture and that was because the remaining Senators who voted for cloture realized we have to proceed. We have to get this bill passed; it is very important. I encourage my colleagues to act accordingly.

I also thank my good friend, Senator REID, from Nevada. He has worked hard on this bill, in a totally bipartisan way, knowing how important it is for Nevada. Nevada is a huge State. A lot of folks in Nevada live in Las Vegas and Reno, but I am sure the Senator would like to get up to the northern part of the State sometime, and this helps him do so.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I take a brief minute to express my appreciation, as I have done in this Chamber before, to the chairman of the Finance Committee and the ranking member of the Finance Committee, Senators GRASSLEY and BAUCUS, for their outstanding work on this legislation.

For anyone to come to the floor and accuse the senior Senator from Iowa and the senior Senator from Montana of being budget busters simply does not meet the facts of their careers. These two fine Senators are known for pinching pennies. They are known as people who are concerned about taxpayers' dollars, as indicated by the many disputes that have arisen and the fact that we have criticized them a lot of times for not coming up with enough money for different things.

For them to come forward on this bill means so much. It exemplifies their public service and also exemplifies the importance of this legislation.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank my good friend from Nevada. I think he is one of the best Senators in this body and I think his statement indicates—if one reads between the lines, listens to the music—why.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Georgia.

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

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I want to commend Senators GRASSLEY and BAUCUS for the contributions they have made to this very important measure. They worked diligently to come up with the funding to pay for the programs contained in this legislation. The Finance Committee has provided the revenue to meet the needs of the three committees that contributed to this bill. In doing so they protected revenue that deserves to be in the highway trust fund and found appropriate ways to offset these costs. Through their hard work we can report that this bill is paid for.

Technically, a budget point of order can be lodged against this bill because a small amount of general revenue is needed. But I want all my colleagues to remember that we have gone beyond the budget for the war, for defense spending, and for tax cuts. Has the spending contained in these type of measures resulted in the creation of U.S.-based jobs? That is debatable. But this bill is a jobs bill. There is no doubt in anyone's mind that this bill will create many, many jobs. Should we bring this bill down over a small technicality? No. We should pass this bill today.

I yield the floor with full confidence that we will do so.

Thank you, Mr. President.

Mr. NICKLES. Mr. President, I wish to speak on the issue in the highway bill on which Senator MCCAIN raised a budget point of order. I am not sure I would have made it at this point, but a point of order is legitimate. Frankly, if you believe in sustaining the budget, if you believe in a budget, this bill isn't paid for, and the budget point of order is well made.

I encourage my colleagues to vote in favor of the budget point of order even though I am relatively certain it will not pass. I have tried to restrain myself on making budget points of order. I think it is important that points of

order be sustained. I thank my colleagues because almost every time last year—about 60 times—budget points of order were sustained. As a result, we saved hundreds of billions of dollars in spending. Now we find ourselves confronting a highway bill.

I compliment Senator JEFFORDS and Senator INHOFE for their leadership. They have worked very hard to put together a bill with allocations and formulas which are fair in meeting our Nation's highway and bridge needs. I understand those needs are great, indeed. I understand they want to increase employment. I concur with the objectives. They have worked long and hard to make that happen and to come up with the funding formulas. I don't think Congress has worked as long and hard on how to pay for it. I have heard compliments of our colleagues, the chairman of the Finance Committee and the ranking member. I compliment them as well. But the Finance Committee portion of this bill doesn't pay for this bill that is before us. Those are just the facts.

Somebody can say we think it is paid for, but I can tell you it is not paid for. I will give you a couple of examples. Maybe I don't know how to read, but I happen to be a member of the Finance Committee. The Finance Committee has revenue raisers to replenish the general revenue fund at about $22 billion, over 10 years. This bill is over 6 years. The amount of money raised by this bill to replenish the general revenue fund over 6 years is only $11 billion. It doesn't meet the gap.

If you look at the revenues on the scoring sheet that was handed out by the Joint Committee on Taxation of February 2, the corporate estimated tax payment due July through September of 2009 increased to 119 percent of otherwise required amounts. That moves $11.4 billion from the year 2010 to the year 2009 so they can say we met our targets for the first 6 years of the bill. That is a sham. That is a shell game. To say that pays for this highway bill defies reality.

I told my friends—and they are my friends. Senator GRASSLEY is one of my very best friends. I was elected at the same time Senator GRASSLEY was elected. He and I will be very good friends long after this bill. Senator BAUCUS and I are good friends.

But I think it does not pass the smell test. This shouldn't be enacted into law. They have assured me it won't be, that they will come up with a replacement. I haven't seen the replacement yet. But I just try to look at the numbers and see if it adds up. The fact is right now it doesn't. Maybe there will be an amendment offered later by leadership, or maybe one offered by Senator GRASSLEY and Senator BAUCUS that will pay for it. But right now, it doesn't. Right now, it relies on this shell game of moving $11.4 billion from 2010 to 2009 and saying that helps make it work. It doesn't.

I am amazed people think we are going to be able to get all of this highway spending for nothing. This is a 46-percent increase over the last highway bill, TEA–21. The President proposed 17 percent, but this is 46 percent. The House is proposing 72 percent. They talked about increasing the gasoline tax to pay for it. But they did not. I am guessing they will have to come down. But where is the money coming from for the 46-percent increase? The Federal gasoline tax right now is 18.3 cents. No one here has yet said let us increase the gasoline tax. The President is opposed to that. I happen to agree with him. He thinks if States want to increase their gasoline taxes, let them do it. But right now we are saying we are going to increase Federal contract authority and obligation authority, but we don't have any new money coming in for it.

I looked at what the Finance Committee did. They came up with a bunch of transfers, most of which are taking money from general revenue funds and putting it into highway funds, some of which is sort of related to highway and some not. That totals about $11 billion. It really comes up short. Even if you said this escalating corporate estimated payment in 2009 was legitimate—and it is not, and I wish somebody would come to the floor and say that is very legitimate because it is not legitimate—it is still short. So we are increasing the deficit.

It depends on whose baseline you are using to see how much we are increasing the deficit, but the President forecasted the deficit at $500 billion-plus this year. This will increase that number. The President has deficit figures, estimates for this year $521 billion, $364 billion for the following year, and $268 billion for 2006. This bill is substantially higher than the President's number. Compared to the funding that is actually in the fund, it is about $39 billion shortfall. Compared to the President's number, it is $29 billion. The President was pushing the numbers as far as he thought we could push them without bankrupting the fund and without saying raid the general revenue.

Let's look at what is coming into the fund right now. I mentioned we have an 18.3 cent tax. Some is earmarked for transit, but if you add the total amount of money coming into the fund, it is $228 billion over the next 6 years. This bill would result in estimated outlays of $281 billion. That is a difference of $53 billion. The Finance Committee came up with about $11 billion from general revenue, increasing to $14 billion including fuel fraud receipts to the trust fund, so $14 billion. So there is a shortage. It is not paid for. It will increase the deficit. I hope everyone understands that. I will hear a lot of speeches saying this deficit is too high. I want Members to know this bill will increase the deficit. It is not paid for. If it was paid for, it would not be increasing the deficit. It will increase the deficit. The total amount of money coming under this bill is $242 billion and the outlays are estimated to be $281, and the contracts we are making are greater than $281 billion. The obligation limits are $290 and the total budget authority is $318, and $318 billion is about a 46 percent increase over present law. We did not increase gasoline tax, so that is too big of an increase. It is not paid for.

The point of order made by my colleague from Arizona should be sustained. I am relatively certain it will not be sustained. I hope people understand, in my opinion, we are making a mistake. We should use user fees to pay for the highway program. If we break that link and say highways should be financed out of general revenue funds such as income taxes or payroll taxes, there is almost no limit to how much this bill could cost.

There used to be a limitation on the highway program and the mass transit program. You said users have to pay for the program; when you fill your car with gasoline, you are paying for the roads that you are using. That makes sense. We will be breaking that link under this bill. We are breaking it with general revenue financing and we are not paying for it even at that.

Some Members, Senator CONRAD or others, may have an amendment to pay for it. That would probably be better than just deficit financing.

But we are making a mistake when we break the link between the user pay and paying for highways or not. If people say, I want a 60 or 40-percent increase in gasoline tax, you want a 50-percent increase in the highway program—this is almost 50 percent—you would have to increase the gasoline tax by 9 cents. You want 50 percent more of a program, increase the gasoline tax from 18 cents to 27 cents.

That is not what we are voting on. What we are voting on is increasing the program by 46 percent and we will take some money out of general revenues to pay for it. That puts more pressure on the deficit. I don't diminish for a second the good intentions of the authorizers who are working to help build a national infrastructure that is in desperate need of more resources. I do not denigrate their efforts one iota. I compliment them. They worked a lot longer than we did on the Finance Committee to pay for it. Again, I am not disparaging the work of the chairman and ranking member, but it falls short and it needs to be improved. It will not fund this bill. It relies on a shell game of at least $11.5 billion.

They said they are trying to raise $22 billion to replenish the fund and they do that over 10 years and we find about $11.4 billion is a shell game. It does not meet the needs of financing the bill if people want to say legitimately the bill is paid for.

We have to be honest. We have to say this bill is taking a lot of money out of general revenues and it will increase the deficit to pay for the 46-percent increase in highways. People need to know just the facts. People are always

entitled to their own opinion, but I don't think they are entitled to their own facts. The facts are this is a tremendously large increase in the highway program that is not yet paid for and will increase the deficit. Therefore, I urge our colleagues to vote in favor of the budget point of order later this afternoon.

Mr. CRAIG. Will the Senator yield?

Mr. NICKLES. I am happy to yield.

Mr. CRAIG. We are talking about rates of increase from the last transportation bill to this bill, 43 percent. The President is proposing a level of spending. What does this represent as an increase over the last?

Mr. NICKLES. The President's proposal increases from $218 billion to $257 billion, an increase of 17 percent.

Mr. CRAIG. There is a 17-percent growth rate above current levels of expenditures. Is that annualized?

Mr. NICKLES. Over the 6 years, a 17-percent increase. The bill before the Senate in contract authority is an increase of 46 percent.

Mr. CRAIG. That is annualized?

Mr. NICKLES. It is 46 percent over the 6-year period. You have a 6-year bill. The bill that just expired, TEA–21, was $218 billion over 1998–2003. This new bill will be a total of, for contract authority, $308 billion; total budget authority would be $318 billion.

Mr. CRAIG. I thank my colleague.

Mr. NICKLES. I yield the floor.

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

The PRESIDING OFFICER (Mr. BROWNBACK). Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I was gone during part of the discussion on this issue. I would like to reemphasize a couple points. First of all, when we talk about 40 percent or 43 percent, we are talking about over a 6-year period. Generally we are in the mindset of talking about from year to year down here, and there are people walking around thinking we are talking about a 40-percent increase. We are talking about, if you would amortize it and put it the way we normally discuss things, 6.2 percent a year. This is in infrastructure, things you see out there. I think people need to understand that.

Secondly, those of us who were in the business of putting together this bill over the last year, along with its formula and everything else that is being criticized, considered all these things. Then we went, as we should, to the Finance Committee and said: All right, how are we going to pay for this? And, yes, we can do it. I do not want to get inside the minds of Senator GRASSLEY and Senator BAUCUS as to what considerations they were making during this time, but I will say this, they are the guys who are running the Finance Committee.

They have said this bill is going to be paid for. They have said the three criterion the administration sent down some time ago—that, No. 1, it would not increase gas taxes; No. 2, it would not have any fun-and-games type of bonding fixes; and, No. 3, it would not add to the deficit—is met.

There are 100 people in this Chamber, and I know there can be any number of them who are going to disagree. But I believe if we take this to the committees that have the jurisdiction, have the expertise, have the resources, have the personnel, have the staffers who can put these things together, that is the place it should be, and they have given us the assurance this bill will be paid for.

We just had a vote today. We defeated an amendment that would have increased the amount of money by $7.25 billion in this bill. In other words, the transportation portion of this, the highway portion of this, would go up from $255 billion to $262.25 billion. I think a lot of people who voted in favor of that amendment are the same ones who are talking now about the fact this is too much.

I know we have the genuine division of interpretations as to what the Finance Committee did and how this thing is really going to be paid for. But I have often said—in fact, I said to the administration that, to me, instead of coming down and saying this bill is going to have to be $50 billion less, I would think they would be better off to say: So long as the bill is paid for, does not add to the deficit, does not increase taxes, then we would support it, we would not veto it. I am hoping before this thing is over that is where we will be.

Let's keep in mind one other thing, too. We are sending a bill to conference. In conference all kinds of things happen. I had occasion to speak with the Speaker of the House at length yesterday. We understand when it gets into conference we are going to be able to look at this and take everything into consideration. At that point, we will be able to really evaluate this finance package and see where we are. There is no one out there who is going to say: I want deficit spending. I do not. That has never been my philosophy. I think the senior Senator from Oklahoma has known me well for many years, and he has heard me say for many years that we, who are fiscal conservatives, are big spenders in two particular areas: One is in national defense and the other is in infrastructure.

As I have heard different individuals such as from Arizona and Texas, I am reminded of what happened during the Thanksgiving holidays and the Christmas holidays. We are used to this in Oklahoma. I can remember someone saying: Well, I came from California. As I came across Arizona, they had such great roads. I came across Texas and everything was great. I sure could tell when I got to Oklahoma. They had lousy roads. That is what we have been plagued with for a long time. Our bridges in the State of Oklahoma are dead last of the 50 States.

This is a spending bill that is paid for. It does not increase the deficit, in the opinion of the Finance Committee. I take their word for it, and I know others may not. For that reason I know this discussion is good, but we need to move along.

We are going to be moving along. There is much more cooperation on the floor now. I have to say, this has not been a partisan fight. This has been something where there are honest philosophic disagreements.

I yield the floor.

The PRESIDING OFFICER. The Senator from the great State of Nevada.

Mr. REID. Mr. President, Senator INHOFE and I have been in touch with a number of Senators on the other side. What we would like to do is have anyone who wants to speak on waiving the point of order do that, and then, when that is done, we are going to ask consent to set aside the waiver and go to the next amendment, which would be Senator KYL, who has another amendment.

Mr. NICKLES. Will the Senator yield for a moment?

Mr. REID. I am happy to yield.

Mr. NICKLES. I understand from one of the proponents of the budget point of order they do not wish to concur to setting aside the amendment.

Mr. REID. OK. That settles that. I would advise all Senators, then, we will not be able to vote on this until maybe a little before 2 o'clock. Both leaders have indicated there are people who have problems with being here, and they have agreed to let them not be here, so we will try to speed that up and get to Senator KYL as quickly as we can.

I would say this: If there is no more debate and it is completed on the point of order waiver, rather than sit in a quorum call, I would suggest maybe Senator KYL could talk about his amendment to just speed things up when we finish the point of order vote.

I want to say to everyone here, I think sometimes mornings are a little testy around here. I think, as the day has gone on, we have worked out an arrangement where, to this point at least, we have had up-or-down votes, and we are going to continue to do that for the foreseeable future. The main thing Senator INHOFE and the rest of the managers and I want to do is make sure people feel they have had a fair shake here. We hope we are accomplishing that. We are certainly trying.

I indicated to the Senator from Arizona that at the appropriate time—and probably this is an appropriate time—I would talk publicly about statements I made on the floor yesterday. There was some, I think, very serious debate yesterday, and I indicated during that debate the Senator from Arizona was—I think the words I used were ''at the

beck and call of the White House.'' I would like the RECORD to reflect that was a poor choice of words, that the Senator from Arizona on many occasions has been independent on issues the White House has propounded and advocated.

And so without belaboring the point, if there is an apology that is necessary, I am certainly willing to do that and apologize to my friend from Arizona, who I have the highest regard for. If I did anything to hurt his feelings, embarrass him or—in hindsight, it does not make me look very good to be name-calling. That is basically a subtle way of name-calling, and I apologize for that.

The PRESIDING OFFICER. The Senator from the great State of Arizona.

Mr. KYL. Mr. President, I cannot tell you how much I appreciate the words of my colleague from Nevada. I would like to make two points. First of all, when my staff showed me this morning the words of the Senator from Nevada—and they seemed to be very concerned about it—they probably were a little astonished that my reaction was not particularly negative. I said: Look, people say things on the floor not exactly the way they meant to express them, and I simply attribute it to that. Then I chuckled. The Senator from Nevada and I talked a bit about it, because I said: My friends at the White House might wonder what on Earth the Senator from Nevada was talking about when they appreciate the fact that I don't support the amount of funding in the highway bill even that the President supports, that I don't support the amount of the funding in the energy bill, and in some cases I have been kind of a royal pain for folks in the administration.

I try to support the President all I can, and I do support the President a lot, but we all find ourselves sometimes in opposition to the administration, sometimes in support of the administration. But I do appreciate the sentiment of the Senator from Nevada. He certainly did not mean to suggest, I know, that I only do things if the President wishes them. I appreciate his comments just now.

I also appreciate what else he said, which is the debate has been constructive, that there has been a process to try to get amendments to votes. Just to reiterate that, and describe what I think might happen here next, the budget point of order my colleague from Arizona raised a moment ago has been amended by the Senator from Missouri. I checked with the staff for Senator MCCAIN, and he has no objection to having that vote at or about 2 o'clock, depending upon what the managers of the bill wish to do in that regard. He would be prepared, as I understand it, to come to the floor just before then to make closing comments about that point of order.

I also know Senator GRAHAM is here and wishes to speak. Rather than lay aside the pending business, my suggestion would be to go ahead with that, have any other people speak on it who wish. The managers should certainly be the ones who determine what time the vote is. I will simply express what Senator MCCAIN's staff has told me, which is that he has no objection to voting at or about 2 o'clock and would presume to be here for a few minutes ahead of that time to speak on this budget point of order.

Then presumably following that, if there is not a Democrat who wishes to offer an amendment at that time, I would like to offer an amendment which should not take very long to debate and would be happy to have a vote on that amendment as soon as debate time is concluded. I mean perhaps half an hour or something in that timeframe. I don't know who all might want to speak on it, but I don't have that much time left, and I want to save a little bit of time to speak on other business as well.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I must say this has been a very interesting first year in the Senate. Our country has been challenged in many ways. I have listened to this debate about the highway bill. If I were a citizen of Oklahoma, I would be pretty proud. You have two Senators down here expressing different points of view but in a very articulate way.

The problems Senator INHOFE related in Oklahoma are very real in South Carolina. We are billions short of the money we need for bridges and roads. It is an honest-to-God legitimate problem. This is not about getting reelected. When people say that, I disassociate myself with that. This is about trying to do some good for the country economically.

One good thing about the highway bill that needs to be said more is, it is not just about jobs. That is very important. But another thing for sure, these jobs are going to be here. When you pave these roads and you build these bridges, most of the time, if not all the time, Americans are going to be doing the jobs.

One of the reasons we have had a kind of jobless recovery is that the jobs that are being created are being created overseas. When you look at trying to create a domestic opportunity for somebody to go to work, a bill such as this is an excellent opportunity for people to go to work.

Whether or not it busts the budget, I have had a fascinating opportunity, sitting in the chair for the last hour, to try to figure all that out. Senator NICKLES is going to be sorely missed by this body. I find him to be an extremely smart, capable person. Senator GRASSLEY and Senator NICKLES are very good friends. I like them both. Senator GRASSLEY took the floor about the bill being paid for.

Here is where I come down. The President has made a decision for the first time in his Presidency to threaten to veto a bill if it goes above $256 billion. To the defense of the people in the Senate, there has been a little bit of bait and switch here. The White House at one point in time was not so inflexible in growing the number. I don't know what has happened there, but something has happened. My best guess is that the President sees a trend that is pretty disturbing to our party and maybe the country in general. We have lost sight of our fiscal responsibilities. The deficit is larger than anyone would like. It is going to grow.

The things we have done in the past have all been necessary. A prescription drug benefit can save you money because if you keep people out of the hospital with a prescription drug, that is a lot better than having to treat them in the hospital. But at the end of the day I voted no on that bill because I believed that by the way we set it up, utilization rates would go through the roof.

I am totally convinced that the marketplace works in two ways: It can bring out the best in people or the worst. If you have a dollar copayment, if you make under $12,000 a year as a senior—and a lot of people are in that situation—your payment under the Medicare prescription drug bill is $1. That is it. I just really believe that people are going to start using drugs at a higher rate and that if you are in the middle of the pack, as a middle-income senior, this is not that great a deal. The donut hole will be filled in because of political pressure. The means test is a great idea and the health savings accounts is a great idea, if we can hang on to them.

At the end of day, my fear was that the Medicare bill would not be $395 billion; it would explode. Even in my wildest dreams, I never believed it would explode by some $130 billion in a week. So the estimate of 395 is now 534.

Let me tell people in South Carolina about these estimates. It is a guess at best. It is an educated guess. The deficit is an educated guess. Two years ago we had trillions of dollars of surpluses as far as the eye could see over a 10-year period. The truth is, you really can't govern based on what is going to happen 10 years from now because you really don't know. You can govern pretty well if you will watch every year or every couple years where you are and project down the road and not let this thing get out of hand.

The highway bill is not like the farm bill. The farm bill was special-interest driven even more than the highway bill. I wound up voting for the farm bill. The amount of money we spent on the farm bill was more than I felt comfortable with, but I wound up voting for it because I am trying to get my legs here as a new Senator.

Senator INHOFE and Senator GRASSLEY were the two leading proponents of the tax cuts. I am very glad I voted for the tax cuts because I think they have helped the American economy. But we are going to have to make a decision in

light of everything we have done in the last year—the war, the tax cuts, because it does take money away from the budget in the short term, but it has helped the economy—how far do we go down this road, no pun intended.

I guess I have made a decision. I have made a decision that the President's desire to not see this bill grow over 256 is probably a good decision. You hate to do it on a bill where so many people have worked so hard to address legitimate needs and to clean up the mess of highway funding. Senator INHOFE, his colleagues, and his ranking member should take great pride in the fact that they have taken the funding of highways that was kind of a hodgepodge and made it more professional. You brought money back into the highway trust fund that should have been there all along. You have taken interest payments on highway trust fund moneys that went to the general revenue and you have brought them back. I congratulate you for trying to build a stronger fund because we need a stronger fund.

Here is the really hard part for me as a conservative. The average person in my State works until about May, or now almost June, to pay taxes. If you are out there working for a living, when you add up your State tax and local tax and Federal tax and you look at your pay, it takes you almost half the year before you start working for yourself. So the last thing I want to do is come up here and put another burden on people.

The worst thing I could do is come up here and lie to people. This is the truth: Our highway funding needs are far in excess of the money coming in from the gas tax, the mass transit taxes. We are trying to get more money back into the pot, and I don't want to use general revenue.

The reason I don't want to use general revenue is that it would be a bad principle. If you start using general revenue to fund highways, then you will just have total budget chaos. The authors of this bill have tried to avoid that as best they can. They put money back into the fund. In their opinion, it is not enough.

We are at war. The Senate highway bill is increased by 43 percent. I am sure every penny could be used in a legitimate manner. But when you do the family budget and when you do your budget back home at a business entity, to raise one area by 43 percent would be a very difficult task to do to keep the budget balanced. As much as I would like to get money into Oklahoma and South Carolina in a more robust fashion, I don't believe a 43 percent increase, given our financial dilemma up here with the war and other problems, is going to be fiscally sound.

With the President's increase of 18 percent and 43—I hope we can reach a compromise. The House version of 70 percent is not going to happen. The key issue is, how can you get more money in the trust funds without raising taxes? Down the road, I don't see how you do that. So some time in the near future, America is going to have to come to grips with a couple of competing concepts. The war on terrorism was unexpected in many ways, in terms of its scope and cost. Maybe it should not have been, but it was. Every day we are trying to get better in fighting that war. We have spent a lot of money we did not plan to spend but couldn't afford not to spend. That is on the deficit.

The recession is finally over. That has been hurting our revenues. As I see it, as a fairly new Member of this body, future budgeting is going to be tough to get this thing back to balance in my lifetime. We are going to have to do some things we have never done before. I think there have been a lot of creative things done to the trust fund to make it more solvent in the future.

This is a bridge too far for me. I want to build bridges, but there are too many being built given our other needs right now. Probably, over time, conservatives are going to have to come to grips with a gas tax increase, which is going to be the only legitimate and honest way to make up the shortfalls in terms of our highway needs in this country. You can play with the numbers all day long, but a legitimate, honest debate over whether we need new revenue has been had in this bill. The question is how to do it.

I think this bill borrows money. This bill is not paid for. The point of order is legitimate. I am not blaming anybody because the needs are real. But some day, somehow, somewhere, we are going to have to start saying no to something. The President has chosen to say no to this approach to highway funding.

This President has not vetoed a bill since he has been in office. Whether or not he will veto this particular bill, I don't know. But his letter was correct in terms of his concerns about the way we are going as a Nation, in terms of spending. I hope and pray we can work out a compromise between the House and Senate and the President that will do most of the things Senator INHOFE would like to do, because those are legitimate concerns. They will not be able to get everything they want, given the amount of money we have to spend. That is probably true of people in South Carolina who voted for me or did not vote for me. This year, you are not going to get everything you would like because times are tough.

My hope is if we cannot do a 6-year bill we can agree on, which will withstand the highway road building projects in a way that will allow things to go forward, we will come back next year after the election and look at some long-term solutions. That is my hope. At the end of the day, I think the President will veto this bill, and it will be a debate that probably needs to be had about how far you can go before you literally not only break the bank but make it impossible for the bank to be restored.

I know a lot of people have worked long and hard. Senator GRASSLEY was given the job of trying to come up with some offsets, and he is right, it is hard to do. I think Senator INHOFE has looked at the highway trust fund every way you can look at it to try to make it more sound and secure and to get legitimate revenue into the pot. Unfortunately, at the end of the day, the amount of money we are going to spend has a deficit component, in my opinion. I may be wrong. But the President sees it that way. The politics of this bill is probably the most important decision we will make this year in terms of domestic spending. If we can resolve this issue in a way that maintains budget integrity and gets money out into the country to create jobs, we have set a good tone for the rest of the year. But if the political discourse about this bill at the end of the day divides us along many lines, and creates an us-versus-them attitude and we try to say one side is good and the other side is bad—that is about where we are right now—the prospect of a consensus down the road to maintain the fiscal discipline we need to balance the budget one day I think will be lost. I don't know how it happened, but it has happened.

All the forces that are in play post-9/11 and before are coming together on this bill—the obligation of the country to defend itself, the obligation of the country to make itself economically viable by improving infrastructure, the moral duty for one generation not to put so many burdens on the next so that they cannot survive, making hard decisions that are inconsistent with some of the things you have said as a politician in the past, like raising taxes—all of those concepts are coming to bear on this bill. To me, this bill and how we resolve it is a test of character as much as it is of anything else.

Do we have the ability to set aside our individual hopes and dreams, whatever they may be—whether deficit reduction, highway spending, never having a tax increase, whatever drives your train—can we find some common ground? If we leave the playing field having a veto that was overridden, the consequences to this country, not just the Republican Party, are extremely serious because if we cannot control it on highways, as popular as that might be, how will we ever control it when it comes time to repair Social Security?

That trust fund is $5 trillion short of the money it needs to maintain solvency by 2042. By 2075, that trust fund is $75 trillion short of the money it needs to maintain solvency. Those are numbers beyond comprehension. How did we get into that mess? Both parties, in my opinion, have played games with the real problem of Social Security, because nobody in the past has really wanted to embrace the looming problem Social Security faces. Why? It is very hard in any election cycle to talk about Social Security, because people who are on it get scared to death.

I was born in 1955. There were over 16 workers for every retiree when I was born. Today, there are three workers for every retiree. Twenty years from now, there are going to be two workers for every retiree.

The point I am making is Social Security has a problem that is not created by the Republican or Democratic Party. Social Security is funded by payroll taxes. That is the exclusive source of money coming into Social Security. The highway trust fund is funded by gasoline taxes. If you think the highway bill is a problem, trying to live within these numbers, you have not seen anything yet when it comes to Social Security. The consequences of having 2 workers for every retiree versus 16 for every retiree when I was born are huge.

In 2042, which is not that far away, the only way we can keep the checks coming is to reduce benefits across the board by 28 percent or double taxes. To sit on the sidelines for the next 30 years and argue with each other is unacceptable because after 2042, it gets worse. The highway bill has a similar problem but not nearly as dramatic. I think every dollar we will spend in this highway bill has a legitimate purpose.

If we overspend this year, if we go to 43 percent this year and add to the deficit and not have a fiscally sound plan to save the highway trust fund, we set in motion the forces that come back to haunt us. If we could solve the highway problem in a bipartisan fashion, then maybe we will solve Social Security in a bipartisan fashion. But the truth is that the highway needs, the infrastructure needs of this country cannot be maintained at the current rate of revenue flowing into the trust fund. That problem gets worse over time, not better.

I do not want to pass on every problem on my watch to somebody else. I would like to be thought of as somebody who at least embraced a few problems on my watch in a serious way and did things outside the box. There is nothing outside the box about trying to create offsets. We do that all the time. There has been some outside-the-box thinking about this trust fund and recapturing money, and that will make this trust fund more solvent and more sound over time.

At the end of the day, in my humble opinion, we can't afford, at this point in our Nation's history, with a looming deficit that seems to have no end, a nation at war that seems to have no end in the short term, to increase spending on something as meritorious as highways at this level now this way. That is why I think this vote on this bill will define us for the rest of this year and maybe in years to come.

I am totally convinced of the following: That if the leaders of the House and the Senate sat down with the President, we could find a way to put new money into the trust fund, get through this conflict, and next year talk about some new funding that would be permanent over time. I think that is possible. I hope that happens because the quality of the people with whom we are dealing are capable of doing that. I will not be in that room as a junior member.

I just have one vote, and my vote will be cast for a purpose. It is not to deny anybody a chance to improve their State or for us to improve the economy through better infrastructure. I will vote no, and hopefully the President will have some support for his veto threat. That ''no'' vote is cast to say let's look at a different way, a better way of resolving this issue. This, right now, is sheer, tough politics.

People wonder: If they vote no, will they lose all their highway projects. That won't be up to me. People have to choose the path they think is best to manage their bills and to run the Senate. But I can say for absolute certainty that the best way for me to go home and get reelected is to be me. I am not going to try to change and become something overly opposite of what I ran on. So I believe if I vote no with the proposition that 43 percent is more than the taxpayers can afford right now in terms of retiring the deficit over time, that this is a bridge too far, most people will agree with me.

That is my hope; that is my bet. But if they don't, I am still going to vote no because the reason I was sent here, I assume, was to use the best judgment I can muster. And the best judgment I can muster after having listened to this debate, which I think has been good and healthy, is that this highway bill has been innovative. We have done some things to make the trust fund sound, and the needs are real, but we are going too far. We are putting too much pressure, combined with the other actions that we have taken, on future generations, and somebody sometime has to say: Whoa.

That is what I intend to do—to cast my vote with the idea of let's look at this in a new and different way in light of the rest of our problems.

I yield the floor. Mr. President, I thank you for listening.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Chair. Mr. President, I compliment the Senator from South Carolina on his comments. I, too, will be voting no on this motion to waive. As a member of the Finance Committee who worked on this legislation, I just want to say that the reports about this bill not being paid for are accurate. There are games clearly being played to try to move money from one year to the next, to cover up money by moving money from the year 2010 to 2009 and pretending this is new money. In fact, this increases the deficit in 2010 because it is outside the window of what this bill deals with; it is only a 6-year bill.

We have provisions that increase taxes in areas that have nothing to do with transportation in order to fund transportation dollars. I know a lot of people don't care about that. Most people in this Chamber, obviously, by their votes are not going to care about that. We increasingly care less and less how things are funded around here. At one time around here we were actually concerned about that.

I admit, I am guilty on my own account having voted for this Medicare bill we just passed where we increasingly, over time—it took us a while—increasingly over time we separated the funding taxes and stream for Medicare from the money we actually spent on Medicare because the demand was so great to provide Medicare services that we decided just to fudge and lose a little general fund revenues, then a little more, a little more, and then a lot more and a lot more, and all of a sudden now the Medicare Program has grown and the vast majority of it is now funded, in large part, by general fund revenues. It has no relation to the Medicare tax that we pay. That is only a small part of the program, as it turns out.

Highways and transit have always been funded historically by user fees. Most of it is gasoline taxes, but there are other excise taxes and special taxes that are put on transportation. Why? Because the concept was we were going to create a Federal gas tax and collect money from the users.

One of the points we hear over and over is this is a user fee. It is not a general tax, but we are going to tie the amount of money we collect to the people who use it, and that makes sense. Those who use the roads should pay for the roads, and the costs should be passed along to those who benefit from the use of the roads, from the businesses that pay the taxes and individuals, for that matter. There was always this nexus, and that stood us in stead.

The argument was made for years around here that we were paying more taxes than we needed to pay because we weren't spending all the money that was coming in, and that was a legitimate complaint we had two transportation bills ago to spend all the money that was coming in and not use some of these gas taxes to pay for other Government spending to hide the real cost of Government.

I supported that because I supported the concept that when someone is being taxed on gasoline and other excise taxes, that money should be used to improve the roads on which they are driving.

We were able to accomplish that 12 years ago. Six years ago we said we not only are going to take all that money, but the money that accumulated over time, we are going to spend that down. I thought: That is really a general fund transfer, but legitimately that money was put in there for that purpose. OK, I will support that.

Now we are saying there is no more money left in the trust fund, there are no more revenues coming, but we still want to spend more. Why? Well, I have developed an axiom in Washington and

that is: Never get between a Congressman and asphalt because you are destined to get run over. And that is exactly what is happening in the Senate and the Congress.

There are a few of us who will soon be roadkill on the Senate floor, who are going to try to get between a Congressman and a Senator and the ability to go back home and say look what wonderful road projects I am delivering.

I am for road projects. I am for transit projects. I believe we need to improve our infrastructure. I just think we need to be honest how we are paying for it. So let's be honest about it. We are not paying for it.

Now, if any of my colleagues went home, as I did, over the break, one of the things they probably heard over and over again was the profligate spending that is going on in Washington, DC. Republicans and Democrats alike, there is no difference between us, we are all just spending money like there is no tomorrow and there is no deficit.

So many of us came back saying there is a point where we need to rein this in. We have huge deficits that go off in the future. It is time for us to start drawing the line, and it is important not just because we have huge deficits but it is important to signal to the markets, it is important to signal to those who value our currency, that we are not going to allow this fiscal irresponsibility to continue; that we are not going to continue spending at outrageous rates of growth like the 45 percent increases that are in this bill.

I think it is unfortunate that the highway bill is in the crosshairs because this is a bill that is very important. I understand that. But let's be honest about it. The signal we are sending is; the throttle is still wide open; we are going to spend, spend, spend. Of course, we will justify it by saying a whole host of things about how important this is to our economy and all the other things, but the bottom line is we are spending a ton of money and we are not paying for it. We are adding to the deficit and we are doing something very dangerous, which is taking money from the general fund to fund highway programs.

I think it is wrong. That is why there is a budget point of order against this bill. Now, I understand we are not going to succeed because this amendment or this point of order gets between a Congressman and asphalt. Most amendments will fail when that is the case.

The bottom line is, somebody somewhere in this Senate is going to have to start getting between Members of the Senate and House and the projects they want to deliver back home. Otherwise, this deficit is just the beginning of problems.

I had an opportunity to spend a little time with the President up in Pennsylvania this morning. I had a chance to chat with him just briefly about this legislation. Let me assure my colleagues, any Member of this Senate who thinks they are going to go back home and get a bill that is $290 billion or $318 billion or $375 billion, which is what the House was talking about, they may be able to do it but they are going to have to do it by overriding a veto.

Again, that is the old axiom that maybe the President is going to try to stand between a Congressman and asphalt. The President has a pretty big roadblock that has to be gotten through, and I am one Senator who is going to support that roadblock because I believe we have to at some point start to say fiscal responsibility matters and we are not doing it.

I would rather have us have a vote on the floor of the Senate right now about gas taxes. If my colleagues want to fund this program, fund it by putting a gas tax in place. Where is the courage of the people who say we need more roads to pay for the roads? That is the problem we have. We always want to spend more money, do more things, and we do not want anybody to pay for it today. Whether it is Medicare, highways, or whatever the case may be, it is spend more now, get the political benefit, and pass on the bill to that future generation that, by the way, I do not have to worry about because I am not going to be running when they are voting; I can always give them something and pass it on to the next generation and they will not be mad at me.

At some point, this Ponzi scheme is going to come up. In my mind, this is a Ponzi scheme. It is wrong.

Now, I admit—and I am going to talk about this later, not now, because this is a debate on the budget point of order—this is a bad bill for a lot of reasons. One is because it uses general fund revenues. No. 2, it raises the deficit. It is not paid for. There is also a reason I will talk about later, which is what it does to my State, which is a grave injustice. It is counter to everything.

This entire area of funding transportation projects from Washington, DC, which is a fairly recent phenomenon, the whole idea was to facilitate national security and defense but also interstate commerce.

What does that mean? That means States that shoulder the burden of carrying cross traffic should get paid by other States that do not have that burden but get the benefits of it. I daresay there is no State in the Union that carries more cross traffic than Pennsylvania. Yet we become a donor State under this bill, which is an outrage. That is a parochial interest about which I will talk at another time.

The philosophical and, I believe, fiscal reasons to oppose this bill have been laid out clearly by several people in the Chamber. It is wrong. We will lose, but ultimately the American economy will lose. The impact and ripple effect of this bill, which will send a signal to those who are looking at the Congress of the United States to see whether we are going to constrain spending, will be profound and will multiply innumerable times the number of job losses versus the job creation in this bill. This is a bad jobs bill, and we need to put an end to it.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Arizona.

Mr. MCCAIN. Mr. President, I probably will not win this vote since I think the sentiments of many of the Members were expressed in the cloture vote, but I think it is important to point out again that the total spending in this bill exceeds the current budget resolution by $35.5 billion. We are facing a $500 billion deficit for the year 2005. In the Armed Services Committee hearing the other day, the Secretary of Defense pointed out that they will be coming in for a supplemental appropriation, many billions of dollars, after the elections, probably sometime in January. Our service chiefs mentioned that they might be 4 months' short of being able to operate with the funding they have. Our priorities seem to be passing a bill that exceeds the budget resolution by $35.5 billion.

I note the presence of the Budget Committee chairman, who I think does an outstanding job. I appreciate the credible efforts he has made both as chairman and otherwise for fiscal sanity. I wonder if we ought to waste our time this year going through the couple of weeks of trying to come up with a budget, or should we consider, as many House Members have and other Members of this body, that perhaps we should make the budget resolution signed into law by the President of the United States? With all due respect to my dear friend from Oklahoma, who has been here many years, this makes a mockery of the entire budget process.

The distinguished chairman of the Finance Committee came to the floor and raised these old chestnuts as to how we are going to finance it. My all-time favorite is customs user fees. Again, I ask my friend, the chairman of the Budget Committee, how many times have we used customs user fees as a way of paying for something which has now given us a half-trillion-dollar deficit, the party of the balanced budget amendment to the Constitution in 1994?

Mr. President, I ask unanimous consent for the Senator from Oklahoma to respond to my tirade.

Mr. NICKLES. I will respond to the question of my colleague and friend, and the question was how many times we have used customs user fees. They have been used several times, although I do not know that we have passed it. It is used to help pay for more spending in many cases, maybe other tax cuts, but it has not been enacted into law. My guess is it will be at some point, but I think my friend from Arizona is making a very valid point and I appreciate that.

My colleague asked, if we pass this, do we still need to pass a budget? I happen to think we do. Because we passed a budget last year, we saved hundreds of billions of dollars' worth of spending over a 10-year period of time. The budget resolution helped make that possible. So I hope we will still be able to pass a budget resolution in spite of this bill.

Mr. MCCAIN. I say to my friend, I thank him for his hard work. Again, I do not look forward to the most unpleasant day we have this year in the Senate, and that is when we all vote every 30 seconds on issues of huge import and none of us have a clue as to what we are voting for when we do it.

Again, I don't think it is through any fault of the chairman of the Budget Committee that this is over the budget resolution by $35.5 billion. But, if this is the process we should go through when we are authorizing or appropriating money—we have a budget resolution. It calls for a certain amount of money to be spent for a certain function. But then we can get the chairman of the Finance Committee to come down and say, Don't worry about what we decided in the budget resolution; we will just find some more money. Usually customs user fees is one of the old chestnuts that are drawn out of the fire to be used over and over again.

The other thing about this, my dear friends, the House of Representatives just decided to delay by 4 months consideration of the transportation bill. Why? Because there is an outright revolt over there, because they are closest to the people, about these totally out-of-control spending practices which have given us these unprecedented high deficits. I hear a rumor that they may do what is probably the right thing to do and just extend for 1 year the existing transportation legislation.

So what do we do? We are passing legislation of which the President of the United States has guaranteed a veto. Again, I like to point out, it is the Republican Party that is the majority. It is the party of the President of the United States that is in the majority here, yet we are pushing a bill to which the President says he is unalterably opposed. What is going on?

I hope my colleagues will consider voting to uphold this budget point of order. It is clearly valid. This budget point of order is clearly valid.

My friend from Oklahoma said he wished I hadn't raised this point of order because he doesn't like to see the budget really overridden. A vote against upholding the budget point of order, to waive the budget point of order, will basically override the work of the Budget Committee. I hope my colleagues will take that into consideration if they vote to waive this and future budget points of order.

It is interesting, on this bill no further budget point of order can be raised, according to the waiver that is before the Senate now. No matter how outrageous, no matter how egregious, we have waived this budget point of order and future points of order.

There is something wrong with this system. Let me remind my colleagues again, we have been on this for 2 weeks. For 1 week we didn't have a single vote. Yes, I oppose unanimous consent agreements. I never ever opposed votes on amendments. I was in favor of those. Why didn't we have a vote on the Gregg amendment? The reasons are obvious: Because they didn't want a vote on it. But that was not a reason to stall any process. But that is behind us.

Now we are faced, as of yesterday, with a veto threat from the President of the United States because of the tremendous $35.5 billion increase in spending over the budget resolution and about $62 billion above the President's request on this legislation.

I urge an affirmative vote, a vote against the motion to waive the budget point of order.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise as the ranking member of the Budget Committee. There is no question that this budget point of order is well taken, in the sense that the legislation before us as it is at this moment is not paid for. It is not paid for in any way that is serious.

In the Finance Committee, Senator NICKLES and I raised this point repeatedly and secured a commitment from the chairman and the ranking member that, before this legislation would leave the floor, it would be paid for. I had offered an amendment to pay for this bill in the Finance Committee and only withheld that amendment based on the commitment that we were given by the chairman and ranking member of the Finance Committee that this bill would be fully paid for before it leaves this Chamber. I am trusting in the chairman and the ranking member to keep their word—to keep their word to me, to keep their word to Senator NICKLES—that before this bill is passed, it will be paid for.

It is on that basis that I will vote to waive the Budget Act. But I think it should be abundantly clear Senator MCCAIN is correct in saying that, as it is before us, this bill is not paid for.

I do want my colleagues to know that in the Finance Committee the chairman and the ranking member pledged that before this bill leaves this Chamber, it will be paid for. I trust them at their word. They have made that commitment. I can say that they have kept commitments to me in the past. I am counting on them to keep that commitment that in this Chamber, before this bill leaves the floor, that it will be paid for—and not by any timing changes; not by moving corporate receipts from 2010 to 2009, or any funny-money financing, but really paid for.

I should add, I am disturbed that this waiver takes down other potential budget points of order except out of the conference committee. Out of the conference committee, if it is not paid for, we would still have budget points of order apply. But I must say I am very disturbed that this waiver will be for all budget points of order because there are other legitimate points of order that could be raised unless this problem is fixed, as the chairman and ranking member have promised this will do.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, I ask for the yeas and nays on the waiver.

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

The question occurs on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Pennsylvania (Mr. SPECTER) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye.''

The yeas and nays resulted: yeas 72, nays 24, as follows:

[Rollcall Vote No. 12 Leg.]

YEAS—72

Akaka	Dayton	Lott
Allen	DeWine	McConnell
Baucus	Dodd	Mikulski
Bennett	Dole	Murkowski
Biden	Domenici	Murray
Bingaman	Dorgan	Nelson (FL)
Bond	Durbin	Nelson (NE)
Boxer	Feinstein	Pryor
Breaux	Frist	Reed
Bunning	Grassley	Reid
Byrd	Harkin	Roberts
Campbell	Hatch	Rockefeller
Cantwell	Hollings	Sarbanes
Carper	Inhofe	Schumer
Chafee	Inouye	Shelby
Clinton	Jeffords	Smith
Cochran	Johnson	Snowe
Coleman	Kennedy	Stabenow
Collins	Landrieu	Stevens
Conrad	Lautenberg	Talent
Cornyn	Leahy	Thomas
Corzine	Levin	Voinovich
Crapo	Lieberman	Warner
Daschle	Lincoln	Wyden

NAYS—24

Alexander	Enzi	Kyl
Allard	Feingold	Lugar
Bayh	Fitzgerald	McCain
Brownback	Graham (SC)	Miller
Burns	Gregg	Nickles
Chambliss	Hagel	Santorum
Craig	Hutchison	Sessions
Ensign	Kohl	Sununu

NOT VOTING—4

Edwards	Kerry
Graham (FL)	Specter

The PRESIDING OFFICER. On this vote, the yeas are 72, the nays are 24. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to and the point of order is not sustained.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 2473 TO AMENDMENT NO. 2285

(Purpose: To provide for a substitute to title V)

Mr. KYL. Mr. President, if the managers of the bill have nothing at this point, I have an amendment at the desk which I would like to call forward. The amendment is No. 2473.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 2473.

Mr. KYL. 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 printed in the RECORD of February 11, 2004, under ''Text of Amendments.'')

Mr. KYL. Mr. President, let me briefly describe for my colleagues what this amendment does. In simple terms, it reduces the funding we have provided for the transit and highway purposes of this bill from the amount in the substitute offered by the Senator from Oklahoma to the amount requested by the President; namely, $256 billion over the 6-year period.

That is the amendment. There are some features of it we could discuss, if you like, and I would be happy to answer questions from my colleagues. But the gist of this amendment is simply to say, we understand the bill before us is too expensive. The President has said he supports a $256 billion number. The statement of position by the administration would recommend a veto if the bill violates the principles set forth by the President, including specific reference to the substitute that we are considering.

So it seems to me if we want to ensure the bill will not be vetoed, if we want to demonstrate that we are going to begin to spend money wisely here, then we should be willing to support the level requested by the President over 6 years, which is $256 billion.

Now, we have quoted before from the Statement of Administration Policy. What I would like to do is quote from the President's press officer, Scott McClellan, on board Air Force One this morning at just a little after 10 o'clock. After talking about some other things, he had this to say about the question of the highway bill before the Congress. He said:

This is the first test for the Congress when it comes to spending restraint. And the President's proposal is at $256 billion.

I am reading from the comments this morning of the President's press secretary. He said:

This is the first test for the Congress when it comes to spending restraint. The President's proposal is at $256 billion. This is for the next 6 years. It's a 21 percent increase above the previous 6 years, and we urge Congress to show spending restraint in moving forward on this legislation.

That is the basis for this amendment, to limit our funding for highway transit purposes for the next 6 years to this level, $256 billion.

Let me get into a little bit of detail about what the Finance Committee did to come up with a larger number. One of the reasons it is important for us to focus on this number is because in all three respects that the President's advisers laid out in the statement of position of the White House, the bill before us violates the principles laid down by the President. Those three principles which caused the advisers to the President to recommend a veto if any of them were violated are as follows: That the transportation infrastructure spending should only rely on gas tax revenues and that there not be any increase in gas tax or other Federal taxes.

This bill raises other Federal taxes. This bill provides new spending that doesn't come out of the highway trust fund but, rather, results from work the Finance Committee has done to close a variety of corporate loopholes. We are familiar with some of the corporate loopholes the Enron executives were able to take advantage of, for example. There are some other provisions we were able to close which represent tax increases for the people who otherwise would have been able to take advantage of those loopholes.

Those tax increases will produce revenue—I have forgotten the exact amount, but in the neighborhood of $50 billion or thereabouts. That was revenue we counted on to use in providing relief to our manufacturing facilities because we are going to be taking away from that some special tax treatment the World Trade Organization held to be impermissible under the WTO principles. Our European trade competitors brought a case against us in the WTO, and we lost that case.

The way in which we gave tax advantages to our manufacturing companies can no longer exist. We have committed to the WTO we will change our tax laws so those advantages no longer exist. However, we recognize we have lost a lot of manufacturing jobs over the last several years. We don't want to simply reduce for those companies the offending provisions. We want to substitute something else so our manufacturing corporations and other corporations will have the tax structure to continue to grow economically, to continue to produce jobs and hopefully create new jobs.

If we use the revenue the Finance Committee came up with for this purpose—and it is called the FSC ETA reforms—if we use those revenues instead to build highways, I don't know where we are going to come up with the money to aid our manufacturing firms. I mean this with all sincerity. It is fine to respond to our general contractors who are great people back in our home States; we are going to be spending a lot of money on highways. We are going to be increasing spending by 21 percent if we just adopt the amendment I have laid forth and the number the President has requested. But I don't know how we are going to look our manufacturing constituents in the eye, and particularly the people who work for them, and say: Gee, we are sorry. We spent the money we would have provided to you on building highways.

I don't know where we are going to get the money to support the tax relief to these manufacturing corporations if we use all of that money for this purpose.

That is exactly what the Finance Committee bill does. The chairman of the committee has said the bill is paid for. This is how the bill is paid for. So we have increased taxes, and we are going to be transferring that revenue from a project we all committed to, and we have to move this forward by March or there will be retaliation by our trading partners in Europe. They have waited patiently for a year and a half or 2 years now. We have to do that. But now we are going to apply those revenues to this bill. Why? Because the chairman of the Finance Committee felt he had an obligation, in view of the Bond amendment that passed last year, to find some way to fund the level the Senate had passed.

It raises taxes. It violates the President's principle. On that alone the President's people would recommend a veto. We should not do it.

Secondly, the President's principle was the bill should not be funded by mechanisms that conceal the true cost to taxpayers. This bill obviously conceals the true cost to taxpayers because it doesn't limit highway and transit spending to revenues we collect in taxes from those revenue sources. The gas tax produces $196 billion in revenue over 6 years. But we don't limit the spending on highways to $196 billion. Instead, we have found other ways to increase that amount of money.

In the Finance Committee we went over all of these various options, and there are some of them that make enough sense that I am willing to support them and say: All right. You could go above the gas tax revenues of 196. You can get up to about 210 to $214 billion and argue with a straight face this is money that is real money and could, in fact, be attributed to the highway trust fund.

But beyond that, we are in fact concealing what we are really doing. That gets into the third principle, which is we should not be funding from the general fund; that we should fund from the revenues we derive from the gas tax and should not take money from the general fund for this purpose. This substitute violates that principle that until now has guided our spending for

highway projects. It is there both to protect highway users to make sure the money in the fund will be used for highway purposes—a point that was eloquently spoken to by the chairman of the committee, the Senator from Oklahoma, a day or so ago.

It also protects those people who don't pay a great deal into the fund because they don't drive very much and they don't buy very much gas. It protects them from having to pay income taxes to support roads they never use. We have always had the principle that we are not going to dip into general revenues, because once you begin doing that, there is literally no constraint, up until now. Now for the first time we are going to dip into general revenues.

How does this bill violate that principle and the second principle of concealing from the American people exactly how these revenues are going to be spent? It pretends money is in the trust fund that is not there. By saying that, I don't mean to denigrate the purposes or motives of my colleagues who created this mechanism. But the fact is, no new revenue is being created by the collection of gas tax revenues to be put into the trust fund. We are simply going to deem that money was put there without it ever having been put there through the gas tax.

For example, there is an exemption for schools and churches and States and towns. So when your local school bus drives around and has to refill the gas tank with gas, we don't charge them the Federal gas tax for that. What we are going to do now is pretend as though we did. We are going to say, there is $9 billion that would have been collected if we had done that, so we are going to pretend as though there is $9 billion in the highway trust fund.

The other thing we are going to do is, if you buy ethanol, you get a 5.2 cent exemption. You don't pay the full 18.3 cents. You pay 18.3 minus 5.2. We are going to pretend as though that 5.2 cents was collected and transferred to the highway user fund. When I say that, the mechanism is we are going to actually collect that tax, but then we will rebate it to the taxpayer. So it actually was collected once, but it has also been rebated. So again, no net new money.

Since you have to pay highway contractors in real dollars—they don't pave these highways for nothing, with fake money—how do you do it? That is where this corporate tax increase money comes in. The Finance Committee closed these tax loopholes, raised taxes on these corporations, and produced—again, the number is roughly 50 billion. If one of my colleagues wishes to correct me, I am happy to be corrected, but say it is $50 billion.

That new tax increase from corporations is going to then be taken from the general fund and transferred over to the highway trust fund. That is general revenues.

So all three of the principles that the President laid down will have been violated. We have increased taxes on corporations, we have obscured the fact that the highway trust fund doesn't pay for all of what we are spending here, and we have transferred money from the general fund into the highway trust fund in order to pay for the bill on which we are about to vote.

In all three respects, we have violated the principles that the President's statement of policy laid down. Given the fact that the advisers to the President said they would recommend a veto if we do that, and if we move forward with legislation—I will cite the sentence from the Statement of Administration Policy:

> Accordingly, if legislation that violates these principles, such as this legislation—

These people are saying ''this legislation'' violates those principles—

> Accordingly, if legislation that violates these principles, such as this legislation, which authorizes $318 billion, were presented to the President, his senior advisers would recommend that he veto the bill.

As that letter says, and as Scott McClellan confirmed, the President's proposal is $256 billion, a 21-percent increase over the previous 6 years. That ought to be enough. That is why I offered as an amendment for colleagues to vote on here the opportunity to support the President and say, enough is enough, a 21-percent increase is enough—we don't need to spend more—and, as a result, we are going to exercise fiscal restraint and pass a bill that is funded at the $256 billion level.

I would like to yield the floor now to any of my colleagues.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. TALENT. Mr. President, I appreciate the opportunity to offer a few observations about my friend's amendment. He has spoken with his usual eloquence. I listened with care to the three points he raised. I say this with entire sincerity, even though I confess that I didn't agree with a word he said.

I was in the Chamber yesterday and had with me the survey of the Department of Transportation on the needs of the United States of America for transportation. It was about the size of this volume I have in my hand. It was an exhaustive survey that concluded we needed a transportation infrastructure bill of around $375 billion to take care of our crumbling transportation infrastructure.

It is a fact that I have not heard contested, much less contested successfully, on this floor, that 32 percent of the roads in the United States are in poor or mediocre condition; 36 percent of the urban roads are in that condition; 28 percent of the bridges are substandard; we lose $65 billion a year in productivity and man-hours because people are trapped on congested roads; there is $50 billion a year in extra maintenance costs that we have to pay because our automobiles have maintenance problems due to the fact that the roads are no good.

Who hasn't been in a situation where they have rolled over a pothole—and not always on some subdivision road but on a highway—and blown out a shock or their tires have gone out of balance? It is because of the road, and you have to pay for that. It is not going to get better if we don't do something to make it better.

This is what I don't understand from the critics of the bill. What do they want to do? Are these roads just magically going to fix themselves? Is there something defective about this survey? That is what the Department says in terms of its academic study, if you will. We all know it is true. We encounter it every day here on the east coast, and we encounter it when we are in our States. My friend from Arizona talked about the bill conceals something. It doesn't conceal something. It is an attempt to meet the problems of transportation infrastructure.

What is concealing things is to pretend that the problem doesn't exist, to set an arbitrary limit for how much we are going to spend and say, based on what we are willing to spend, that is what we need to spend, instead of honestly assessing where we are in terms of transportation infrastructure in this country and coming up with the money one way or another to meet the needs.

The critics are concealing the fact they don't intend to do anything about the problem. This is what they say: Well, OK, you cannot raise taxes to raise money to deal with the problem. You cannot use bonding because we have never done that before. Everybody else in the country does it. I spoke at some length about this yesterday. I will not inflict it anymore on the Senate. Everybody else in the country bonds for roads and highways and bridges, but we cannot do it here. Now we cannot use general revenue either. So go ahead and fix the roads, but you cannot raise taxes, use bonds, or use general revenue. Go ahead and get the $375 billion.

That is concealing the fact that they are not going to do anything about the problem. We are going to continue losing the $65 billion a year in lost productivity, $50 billion in increased maintenance—and what about the people who die because the roads are no good? What about those people? Tell them we don't need to do any more? Tell their families we don't need to do any more for transportation infrastructure?

I hear my friends say it is not fair to use general revenue, not fair to the taxpayers. There are a lot of people in Missouri who get up every day, and they have worked hard and been fortunate enough that their lives are going pretty good. Maybe they are single or they have families. They work and get taxes deducted from their paycheck every week. They pay the taxes at the pump. They pay all the other taxes they have to pay. On April 15, they write another big check. Because their lives are going good and they don't need a lot of extra help, they don't participate in a lot of Federal programs

that we have here. They support them. They want people with needs to have access to help. They don't participate in it because they don't need it. If you stopped and asked them, what is it you get directly out of the taxes you send to Washington, and they stop and think about what it is that Washington does that makes a difference for them day to day, about the only thing they would say is the roads. They would say: It would help if I could get to work in the morning.

Sure, we have a problem with the fiscal future of the country. That is not even considering what we have to do with Medicare and Social Security when the baby boomers begin to retire.

Mr. INHOFE. I didn't hear the figures the Senator mentioned that were tied to lost productivity and maintenance. What were the figures?

Mr. TALENT. It is around $65 billion a year in lost productivity because people are trapped in traffic jams.

I say to my friend from Oklahoma, it certainly makes sense. We have the workers of the country every morning going to work—and I see it in Missouri—and they are trapped in traffic jams. That is time they are not spending on the job producing goods and services and wealth for the United States.

Mr. INHOFE. The other figure on maintenance was what?

Mr. TALENT. It is about $49 billion in extra maintenance costs because the roads are not good.

Mr. REID. Will the Senator yield for a question?

Mr. TALENT. Yes.

Mr. REID. My friend's memory is very good. The figure is $67 billion. And people wait in traffic and waste 5.6 billion gallons of gasoline every year.

Mr. TALENT. I appreciate the question of the Senator from Nevada, also.

If you went to that taxpayer and said, what do you get for the money you send to Washington, and they thought about it, they would say, well, the roads.

I have people say to me: We don't really want anything, but it would be nice if you would fix the roads. It would be nice if you had an extra lane on that bridge or it would be nice if I didn't have to, when my kid went out on a date at night, wait up at night, not worrying because I thought the kid would get into trouble but whether my kid was going to get home on those roads.

So I think the people who are paying the income taxes of the country into the general revenue of the United States of America would appreciate it if we used a little bit of that to fix their roads. I don't know whether that fits whatever rules of accounting we have been following in the past. I think it would make a difference for the people of the country.

You know what I don't think is fair—what is not fair is to pass the bill for the Nation's infrastructure on to the next generation, knowing we have not done our part to pay it.

Yes, this highway bill is bigger than the last highway bill. As everybody said, it is about 30 percent bigger. The gap between where it is and where it should be is bigger, too, and what that tells us is with each highway bill, we are failing more and more to get to where we need to be, and it is going to have to get bigger and bigger as time goes on if we are going to make up for this transportation deficit.

I used this example yesterday. You are a homeowner, and you have a hole in the roof. You have to consider what options you are going to use to pay for fixing it. But what isn't an option is not fixing it because if you don't fix it, it doesn't get any better; it just gets worse and eventually the roof collapses. I think we should do our part and face honestly what we need.

I appreciate the managers of the bill getting this bill up to the level they have. I ask them to hang tough. We need a highway bill at that level. I made a point of saying yesterday that we need it more than that. I am hopeful, as this process goes on, that we can persuade those who, with the sincerest of intentions, are concerned about the fiscal state of the country, that we don't improve the fiscal state of the country by undermining the economy that produces the wealth on which this Government depends.

We are going to meet these needs in the future. We are going to meet it through growth. America is going to go out and produce and create jobs and grow and make enough for everybody. America will rescue us from this fiscal situation if America can get to work in the morning, and that is what this bill is about.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I wish to speak in opposition to the amendment. The previous speaker has outlined articulately the huge loss in productivity this Nation suffers because of the present situation with respect to our highways, and that if we don't do something about it, we, obviously, are not going to get the productivity we need. With international competition from all over the world now, lost productivity becomes even more important as we go forward.

Many in this body have argued that the level of funding in our bill is too low. In fact, if we look at the transportation needs of the Nation, they may be right. What we have done in this legislation is to follow the will of the Senate.

Last year, during debate on the budget, this body overwhelmingly voted in favor of the budget levels contained in this bill. In addition, our levels are almost $60 billion less than the House proposal—again, $60 billion below the House. In fact, our bill falls right between what the President wants and what the House wants. We are in the right place. I could be wrong—maybe I am—that we should accept that low a level, but we will never get this bill to the President's level. And without a bill, we risk missing out on the creation of many jobs.

The American people need these jobs. The biggest problem we have right now is the lack of effort to pull forward and increase productivity and to increase the number of available jobs. This bill will do it. It will create thousands of new jobs, and it will create them within proper areas of expenditure.

This is a good bill. I would like to see it a little bigger. Maybe we will get it a little bigger. The House is certainly going to give us that opportunity. Right now what we should do is pass this bill and get it on to the President.

I yield the floor.

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

Mr. INHOFE. Mr. President, this will be brief because I think we are getting redundant in some of the things we are saying. I do find it a little bit puzzling that the people who are promoting this type of an approach—whether it is temporary extension or a narrowed-down version and spending less—are the same ones who were willing to spend $7.25 billion more just a few minutes ago.

On the issue of amount, the 40 percent we keep battering around, we have to remind ourselves that when we look at Government programs that are worthwhile Government programs, it is not unusual to have an increase of 6 percent a year. I draw a distinction between this and a lot of programs we have—I have a long list I could read about foolish things we do around here wasting money.

As a fiscal conservative, I believe in spending more in certain areas. One area is national defense and another area is infrastructure. I know that is what we are supposed to be doing here. In fact, the Senator from Missouri has access to a survey that shows that 69 percent of the people in America, as opposed to 22 percent against it, favor spending more money right now in this climate on infrastructure—roads and bridges. That is what we are here for.

I do want to say again—and I am sorry about being redundant, but it is very important—the President sent over three criteria. I think the first two we can't even argue about. We are not talking about raising gas taxes. He wasn't talking about plugging corporate tax loopholes. He was talking about increasing gas taxes. We don't do that.

Secondly, some of the things he considered to be gimmicks, we are not doing. I know the Senator from Missouri would like to approach the more creative types of financing.

In the third area where he talks about taking out of the general fund, that is one that could be debated. I am fully willing to take money out of the general fund if it got to the general fund from the highway trust fund. And it never should have.

One sentence out of the Finance Committee says:

In the view of the tax committee, these tax policy benefits have nothing to do with highway use and should not burden the trust fund.

In other words, if you are going to pass something having to do with vehicles that use less fuel, or something similar to that, that is policy and has nothing to do with traveling on roads. Because those vehicles travel on the same roads as other vehicles, why have the highway trust fund pay for that? I think that is absurd.

I was here in 1997 when we had a balance of $16 billion in the trust fund. The previous administration wanted $8 billion. We said let's take half out of the $16 billion. So they took that out of the highway trust fund and put it in the general fund. That ought to go back. That is a policy of being honest with the people. I think it is a moral issue, in a way, because 99.9 percent of the people who pay their taxes are willing to do that, assuming that goes to building roads and repairing bridges, and it is not because we have been raiding the trust fund over and over for the 18 years I have been here.

That is what this is all about. The Senator from Missouri is exactly right. We can't continue to do nothing. We are going to have to rebuild our bridges and roads.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first I wish to correct something I said. I was trying to estimate the amount of money the Finance Committee has come up with in corporate loophole closings. That is a gross way of saying what we did. We have changed several provisions of law that are going to raise revenue. It amounts to a tax increase on certain kinds of businesses, but it represents good policy. Some of this follows the Enron scandal.

I thought we had gotten up to about roughly $50 billion. Actually, the amount is $22 billion. I stand corrected on that. That would be a $22 billion tax increase if you want to put it that way.

Second, there are two things to which I want to respond. My colleague from Missouri basically made the argument: But our needs are great; we have a great need to rebuild our highway system.

First, I don't want my views to be characterized as I don't care about building highways; that I don't think we have needs. Of course we have needs. We have all kinds of needs. If the Congress responded to every need that every Member brought forth, we would have a budget that is five times as big as it is right now. We can't possibly satisfy all of the needs of all of the people all of the time with the revenues we have, and it is probably a good thing because it does force us to set priorities.

That is what this amendment does. It says we would like to have maybe a 42-percent or 41-percent increase over the last 6 years in highway spending, but everything else in the budget is going to be less than 1 percent, except for homeland security and defense.

If we can set a priority with health, education, welfare, and justice and all of the other activities we do, if we can create a budget that has growth of less than 1 percent for those activities, then why do we have to have more than a 21-percent increase in highway funding, which is the amount that $256 billion finances?

That is the amount the President will support. I do not want my colleagues to characterize this amendment as against highway funding. It is a 21-percent increase. Is that not enough? No, my colleagues say it needs to be 41 percent. Well, that is a legitimate argument, a difference of opinion: Do we need to increase it 41 percent or 21 percent? But do not mischaracterize the argument that those of us who think 21 percent is enough are somehow against doing something about our infrastructure.

The final point I want to make is to respond to the Senator from Oklahoma. As to the rationale used, and he characterized it correctly a moment ago, in the Finance Committee by those people who say this money ought to be attributed to the highway trust fund, we only raised $196 billion in gas tax revenues, but we have made some public policy decisions, the results of which have denied money to the highway trust fund and because of that we ought to attribute those funds to the highway trust fund.

One public policy decision is that schools, towns, and churches should not pay the gas tax. That is a legitimate public policy decision. So we do not collect the gas tax. But the logic is stood on its head to say but because that is a decision that denies funds from the trust fund we should pretend as though we put the money in the trust fund.

The bottom line is, the general revenues of the country are paying for that policy decision, and the same thing is true with respect to the ethanol tax. We do not collect 5.2 cents of it. Now we are going to collect it and rebate it, and they say that hurts the highway trust fund. Fine. Then charge the tax. Do not pretend as though we charge the tax and say that justifies attributing that money to the highway trust fund when, in fact, there is no money, and the only way one gets the actual money in the highway trust fund is going over to this $22 billion in new corporate taxes, taking it from the general revenues and then putting it in the highway trust fund.

That is why I think we should limit this funding to $256 billion, a 21-percent increase. The President says that ought to be enough. I agree with the President.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, from time to time I say nice things about Senators on this side of the aisle, and I do not often enough say nice things about those on the other side of the aisle. I want to say the presentation made by the junior Senator from Missouri is one of the finest presentations I have heard in many years in the Senate. It was logical. It was to the point. It laid out what we, the four managers of this bill, have been trying to do, and how difficult it was to arrive at the point where we are. I want to express my appreciation to the Senator from Missouri for an outstanding statement. It was well delivered and had a lot of substance.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I rise in support of the amendment. This is an opportunity for the supporters of this legislation to avoid a Presidential veto, in two ways. One, bring it down to the President's number and, two, the criteria established by the statement of administration policy highway spending should be financed from the highway trust fund, not from the general fund of the Treasury. All spending for highways should be authorized and appropriated from the trust fund and derived from taxes imposed on highway use. It says the administration supports an authorization level of $256 billion. So to avoid a Presidential veto, I think the Kyl amendment is very important.

I do not want to comment on the statement of the Senator from Missouri, but I was entertained by his comments about the hole in the roof. I will tell the Senator from Missouri, there is actually a hole in the net, there is a hole in the safety net. Maybe highways are more important than people's Social Security and health care to the Senator from Missouri, but the fact is, and ask any expert, including testimony by Alan Greenspan just yesterday, this deficit is going to destroy America, and the first casualties will be Social Security and Medicare because they are unfunded mandates to which we just added, with the support of the Senator from Missouri, a $400 billion and now $543 billion debt on the taxpayers of America.

So if he is worried about a hole in the roof, I hope we are worried about a hole in the net, the safety net, the guarantee that we have made to people who are the least able to defend themselves and help themselves in our society. Those are recipients of Social Security and Medicare. Both systems are going bankrupt while we spend 60-some billion dollars more than the President wants and $35 billion more than the budget resolution we passed calls for.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. KYL. If the Senator from Nevada would permit the Senator from New

Hampshire to speak, then I am happy to let the vote go forward after he has concluded.

The PRESIDING OFFICER. Is there further debate? The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise to speak a few moments in support of the amendment, and perhaps to address some of the issues and concerns that have been raised as well. I begin with the points made by the Senator from Arizona about the overall size of the bill. This amendment, if and when adopted, would certainly reduce the total amount of funds available in the bill, but the increase in highway spending relative to the last 6-year bill would still be 21 percent. To suggest that somehow the supporters and proponents of this amendment do not want to invest in infrastructure, do not want to improve the safety of our highways, do not want to improve the quality of our bridges, do not want to expand in some cases the existing interstate highway system, is simply not correct.

We are not engaged in a debate about the value of infrastructure. We are engaged in an important debate and discussion about how much is enough and about how much we can afford and, as Senator MCCAIN of Arizona pointed out, what our overall priorities are going to be.

I understand for some a 20 or 30 or 35-percent increase in spending is not enough. I certainly believe it is enough, given that the President has pledged to veto a bill that is at that level, given that we have other pressing national security issues, Social Security modernization questions, a Medicare bill that was passed last year that is going to be far more expensive than even the supporters of that bill suggested. We do have other priorities among which we are going to have to choose.

I think it is very misleading to suggest the supporters of this amendment do not care or are not willing to commit that money we are collecting in excise taxes, gasoline taxes, to this kind of investment. This bill as it is currently written breaks the budget. It violates the budget resolution. We just had a vote to waive the budget requirements, to waive a budget point of order so this bill could go forward, because it violates the budget resolution, because it breaks the bank, because it is far more than was prescribed in that budget resolution. As a result, it is going to significantly increase the deficit.

In addition, the legislation contains financing mechanisms that are disingenuous at best, and phony at worst. We are diverting general revenue funds that were never intended to go into the highway trust fund into the highway trust fund, and we are doing it by crediting money to the highway trust fund that is never collected. We say, well, if we had excise taxes that applied to States, cities, and towns, we would collect more in excise taxes, so let's pretend we collected those taxes and put them in the highway trust fund. That is simply wrong.

When that money is credited to the highway trust fund, it has to be taken from somewhere else and it is being taken from general revenues. I think it is instructive to go back to the last debate we had when we wrote a highway bill—in fact, in 1998—and the proponents of a very large highway bill at that time said the only thing we are asking for, and the only thing we ever will ask for, is that all of the money we collect in gas taxes go to highways. That was essentially accomplished with the writing of that bill.

Today we are listening to a debate that pretends that commitment was never even made.

The goal seems to be to scrape every penny possible into the highway trust fund in order to pass a bill that is as large as it could possibly be. That certainly is not OK by me.

I am sure there are some people here who would like to raise gasoline taxes. I am certainly willing to have that vote. There are some people who would like to pass bonding authority. I am certainly willing to have that vote. But somehow the supporters of those ideas, while they want to talk about those ideas and suggest there is a conspiracy to prevent them from doing those things, don't really want to have those votes because they know they would not win.

This bill adds to the deficit, and we do have an extraordinarily high deficit right now. Our economy is just beginning to grow. It is certainly not the right time to raise taxes, but I think it is the right time to begin to exercise some fiscal restraint.

Another question that I think is begged by some of the claims thrown around in this debate is, What is the role of States in highway and infrastructure—transportation spending? There is certainly a tone that suggests the State of Missouri, or the State of Texas, or the State of New Hampshire, or California somehow do not have the wherewithal to design and build a decent road; they don't have the commitment or the foresight to levy excise taxes, collect those taxes, hire good people to run departments of transportation, and invest in maintenance or safety, bridge management, or new highways.

I think that is simply wrong. States are not incapable. States certainly care every bit as much as any Member of this Senate about the safety of their roads, and about their potential for economic growth.

If you look at the highway fatality rates of the different States, some States have done a much better job than other States in dealing with the safety issues that were discussed earlier by some Senators. I think States have not just an important role but a leading role to play here. Certainly in my experience they set better priorities. They tend to spend the money a little more efficiently.

That brings me to my final point. Ultimately, what we are really talking about is a redistribution of funds. If you think literally about what we are doing, the Federal Government is collecting 18.4 cents for each gallon of gasoline sold in the State of New Hampshire or the State of Missouri, or Oklahoma, literally bringing that money here to Washington, and then we are engaging in a debate as to how to divide up that money to send it back to the States. It makes you wonder what the purpose of this diversion is in the first place because I can assure you, the laws of physics, finance, or nature result in less money ultimately going back to invest in pavement or bridges or transit at the local level than ever came to Washington in the first place—unless you believe all the administration, oversight, and regulation that comes from Washington with regard to transportation is free.

It is not. Ask any worker at the Department of Transportation. They may wish they were earning a better wage but they are certainly not working for free. There is a significant overhead cost. That does not mean there is no Federal role at all in these programs or projects or investments, but I think we need to be a little more careful in our debate and discussion. Certainly we need to be a little more careful with the use of the moneys we are collecting, and be more careful in the debate or discussion than to somehow suggest the Federal Government is the only entity that has the ability to make a good decision about which 5- or 10- or 50- or 100-mile stretch of pavement ought to be dealt with first and foremost in our States.

If you don't think we are just talking about a redistribution of money, take a look at the tables that are part and parcel of this legislation. The percentage redistributed to each State is spelled out in excruciating detail, year after year. You can see one State has 102.5 percent of what was collected from that State in gas taxes in year 1. Then it might go to 104.8 percent and then 95.4 percent and then 93.2 percent. The only reason to calculate such specific statistics is that ultimately this is a vote and a battle over a formula for redistributing the money we took from our States and our consumers in the first place.

I think there is some value in a discussion about whether we should leave more of that money at the State level in the first place. Certainly we could give the opportunity to those States that would like to collect that excise tax in the State to spend it locally, and I believe a little bit more efficiently than Congress might do here in Washington.

That is not part of this debate, empowering States, empowering consumers, empowering local officials to collect and invest a little more of their share of these excise taxes, but perhaps in the future it will be. But at the very least, we can take up and support the

amendment before us today that will bring this bill into compliance with the budget, that will bring this bill to a level that will not be vetoed by the President, that will bring this bill up to a level that will ensure we do not have to raid the general fund; that we don't have to raid taxpayers' funding that they are sending for programs other than laying pavement.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate?

If there is no further debate, the question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would have voted ''nay.''

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

The result was announced—yeas 20, nays 78, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—20

Alexander	Enzi	McCain
Allard	Feingold	Miller
Bennett	Graham (SC)	Nickles
Brownback	Gregg	Santorum
Chambliss	Hatch	Specter
Craig	Hutchison	Sununu
Ensign	Kyl	

NAYS—78

Akaka	DeWine	Lott
Allen	Dodd	Lugar
Baucus	Dole	McConnell
Bayh	Domenici	Mikulski
Biden	Dorgan	Murkowski
Bingaman	Durbin	Murray
Bond	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Breaux	Frist	Pryor
Bunning	Graham (FL)	Reed
Burns	Grassley	Reid
Byrd	Hagel	Roberts
Campbell	Harkin	Rockefeller
Cantwell	Hollings	Sarbanes
Carper	Inhofe	Schumer
Chafee	Inouye	Sessions
Clinton	Jeffords	Shelby
Cochran	Johnson	Smith
Coleman	Kennedy	Snowe
Collins	Kohl	Stabenow
Conrad	Landrieu	Stevens
Cornyn	Lautenberg	Talent
Corzine	Leahy	Thomas
Crapo	Levin	Voinovich
Daschle	Lieberman	Warner
Dayton	Lincoln	Wyden

NOT VOTING—2

Edwards	Kerry

The amendment (No. 2473) was rejected.

Mr. REID. I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, may I make a suggestion. This last vote took 35 minutes. We have people who have been waiting to offer amendments all day. We have a number of amendments lined up for people to offer. I would hope the leadership would call a halt to these votes after a reasonable period of time.

There are people who have already come to me, there are people who have come to Senator INHOFE and the two leaders, about how long this is going to take. It could take a long, long time, but it is going to take a lot longer time if these votes go on endlessly. So I would hope we could terminate these votes more quickly.

If people miss a vote now and then, it is not the end of the world. I hope everyone would be in agreement. People feel very strongly about these amendments, and they have a right to offer them. The decision has been made today by the managers of the bill to let them offer them, to have up-or-down votes on them. Until there is some change, that is what we are going to continue to do. But everyone should not be punished by the dilatory nature of Senators for whom we wait around endlessly. I hope the next vote will be 20 minutes and then we will call it quits.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 2430 TO AMENDMENT NO. 2285

Mr. DORGAN. Mr. President, I call up amendment No. 2430.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 2430 to amendment No. 2285.

Mr. DORGAN. 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 modify the penalty for nonenforcement of open container requirements)

On page 147, after the item following line 24, add the following:

SEC. 1409. OPEN CONTAINER REQUIREMENTS.

Section 154 of title 23, United States Code, is amended by striking subsection (c) and inserting the following:

''(c) TRANSFER OF FUNDS.—

''(1) IN GENERAL.—The Secretary shall withhold the applicable percentage for the fiscal year of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b), if a State has not enacted or is not enforcing a provision described in subsection (b), as follows:

"For:	The applicable percentage is:
Fiscal year 2008	2 percent.
Fiscal year 2009	2 percent.
Fiscal year 2010	2 percent.
Fiscal year 2011 and each subsequent fiscal year	2 percent.

''(2) RESTORATION.—If (during the 4-year period beginning on the date the apportionment for any State is reduced in accordance with this subsection) the Secretary determines that the State has enacted and is enforcing a provision described in subsection (b), the apportionment of the State shall be increased by an amount equal to the amount of the reduction made during the 4-year period.''.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, this is an amendment about which I have spoken previously. It deals with the subject of drunk driving. More specifically, this amendment deals with the issue of open containers of alcohol in vehicles. It is similar to an amendment that was voted on and approved by the Senate when we passed the previous highway bill 6 years ago. I would like the opportunity to explain what this amendment does and what it means.

Let me describe to my colleagues an organization that most of them know well, Mothers Against Drunk Driving, a wonderful organization that sprang up over recent years dealing with the issue of drunk driving.

Every 30 minutes someone gets a call that their loved one has been killed by a drunk driver. That is a relentless number of deaths caused by something that can be avoided and can be dealt with, if we get tough dealing with drunk drivers. The scourge on American highways from drunk driving is not some mysterious illness for which we don't have a cure. We know what causes it. We know what cures it.

Let me offer some statistics: Of the children from birth to 14 years of age who were killed in alcohol-related crashes in 2001, more than half were passengers in vehicles with drivers who had been drinking; 23 percent of the children under 15 years of age who were killed in motor vehicle crashes were killed in alcohol-related crashes in 2001; the leading cause of death for children 4 to 14 years of age is motor vehicle crashes, too many of them, far too many, as a result of alcohol.

During the year 2001, 8,054 passenger vehicle occupants under 15 were involved in fatal crashes. It is estimated that 269 children under age 5 were saved as a result of child restraint. The statistics about safety issues with children are really quite remarkable. It is especially compelling to take a look at what is happening with respect to drunk driving. It is important to understand what we can do about it.

The amendment I have offered is very simple and would be hard to oppose. It says that nowhere in this country should you, driving a vehicle, come to an intersection and meet someone else driving another vehicle who is drinking while they are driving. It ought not be legal anywhere in this country to drink and drive. It ought not be legal in this country anywhere for there to be open containers of alcohol in moving vehicles.

Some say: Well, but that is the State's decision. That is a decision the States ought to make.

Thirty-six States have already made that judgment. Thirty-six States have said they agree, under no condition

should there be open containers of alcohol in passenger vehicles on the roads.

There are 14 States, however, that don't make that same judgment. There are some that prohibit consumption by the driver but say it is fine if others in the car are drinking alcohol. There are some that say it is OK to have open containers of alcohol, but you can't have it when the car is in motion. You just have to pull off to the side of the road. There are others that have prohibitions on open containers that apply only to drivers. But one State has an exception for frozen daiquiris. Sound goofy? It does to me. Let me say that again.

We have 14 States that do not comply with the requirement that would prohibit alcohol in a moving vehicle on America's roads. There are several States in which there are no laws at all with respect to alcohol in vehicles. You may, in some of those jurisdictions, put one hand around the neck of a bottle of Jack Daniels, put the other hand on the steering wheel, start your car, begin to move, and you are perfectly legal. You may drink and you may drive. That is unforgivable.

Nowhere in this country should we have laws that permit drinking and driving or drinking in vehicles that are on American highways. This is not rocket science. We know how to prevent this, and 36 States do.

Six years ago, when we passed the legislation creating the highway bill, we had a vote on this. It was a tougher amendment that I offered then. It would have imposed a penalty that 5 percent of the highway funds that were going to a State be withheld unless that State complied with the requirements to prohibit open containers of alcohol in vehicles. That passed the Senate 52 to 47. The first year it was losing 5 percent; the second year and thereafter, losing 10 percent of the highway funds. That was tougher than this amendment.

This amendment provides that if States do not comply with a prohibition on alcohol in passenger vehicles, then they will lose 2 percent of their highway funds each year during the 6 years. The amendment that passed the Senate 6 years ago—an amendment I offered and one that was supported by a majority of my colleagues—was watered down in conference. The requirement still existed, but it was a requirement that said, in effect, you better watch it. It said if you don't comply, some of your highway funds, a small amount, will go to hazard mitigation or safety programs. Money is fungible, so these 14 States that have not complied have not minded that because they have to use money for hazard mitigation in any event. So we have 14 States that have decided it is all right in some circumstance or in some form to have alcohol in your moving vehicles.

I mentioned that one State does actually have a small prohibition against this practice, saying that apparently drivers only cannot drink, with the exception of a frozen daiquiri. There is actually a frozen daiquiri exception.

I think I have the exception here. In this particular State, just to show you the extent to which States have gone to produce their own version of whether you ought to be able to drink and drive: It shall be unlawful for the operator of a motor vehicle, when the vehicle is on the public highway or right of way, to possess an open alcoholic beverage or container or consume an alcoholic beverage in the passenger area of a vehicle.

Then it describes alcoholic beverage: Beer, ale, port, or stout, so on, wine, distilled spirits. Open container means any bottle, can, or other receptacle—(B) except open alcoholic beverage container shall not mean any bottle, can, or other receptacle that contains any amount of frozen alcohol beverage unless the lid is removed and a straw protrudes.

I don't think there ought to be a State in this country where you ought to be able to drink and drive. It is as simple as that.

It is a fact that conditions have changed dramatically in this country, and thank God they have. It wasn't too many years ago when a drunk driving arrest produced a slap on the back and a knowing grin—well, you got caught, did you, old buddy? These days, it is far more serious than that.

A wonderful organization called Mothers Against Drunk Driving decided to stop the carnage on America's roads. They have had a dramatic impact in Congress and in State after State. I have met most of the presidents of that organization in recent years. All of them have lost children to drunk driving accidents. They are all passionately committed to stopping this. Again, there is no mystery to this. We understand what causes these deaths, and we understand how to stop it.

I have told my colleagues before that, at 10:30 at night, I received a call that my mother had been killed by a drunk driver. I will not describe that except to say the horror of that call, that happens over and over and over again in this country, is a horror you never forget. It is so tragic because none of it has to happen. All we have to do is get serious about drunk driving and enforcing our laws and having the right laws.

I wish we were as tough and serious as Europe is. In most of Europe, your attitude had better be that you will not even think about doing this. You don't dare get caught in Europe drunk driving. The consequences and penalties are far too great. That is what I wish we would do in this country.

For about 12 years now, I have been unable to successfully persuade the entire Congress that there ought to be such penalties to require every State in this country to make a very simple statement with their law, and that would be that, in no circumstance, at no intersection, at no time shall anybody be driving a vehicle in this country and drinking at the same time and be perfectly legal. It is nuts, in my judgment, to have laws that allow that to happen—and not just drivers. Yes, there are circumstances where drivers can drink and it is legal in this country—in addition to others in moving vehicles who are consuming spirits and wine, beer, liquor. It is not the right thing to happen in this country. We have gone well past the time when this ought to be debatable.

My colleague, Senator DEWINE—who, incidentally, supports my effort here—offered an amendment dealing with drunk driving which I supported. My colleagues in this Chamber know this is an important and serious issue. They also know that this is the place to address it. If you were going to address the issue of drunk driving, it seems to me you would address it in this venue, right here on this bill.

We spent a great deal of money putting together a piece of legislation using Federal revenue that we collect and send back to the States. We have every right to impose a restriction that says we expect the States to have a prohibition on open containers of alcohol. As I have indicated to you, 36 States have such a prohibition. This relatively small map shows, in dark green, all of the States that already have legislation that causes a complete prohibition on the consumption of alcohol in a moving vehicle.

The legislation I offer would simply require the other 14 States to comply. In fact, a fair number of the 14 are close to complying. I believe it would not be much effort for them to do so. Only those few States that are remaining, where they insist on some sort of personal right to allow people to drink and drive, would object. There is no justification for that objection.

When someone turns an automobile into an instrument of murder because they decide to get drunk and drive, then there need to be consequences. One of the consequences, in my judgment, is not only to get tough with drunk driving, as Mothers Against Drunk Driving have all across the country—they have gone to court and they have represented victims and they have insisted on changing State laws. They have been here in the Congress and have been very successful in dealing with Federal law changes.

In addition to that, they support this, and I believe we ought to change Federal law one more time to make this prohibition on open containers stick across the country. Once again, there is no justification to say that anywhere, anytime, under any circumstance, someone ought to be able to drink and drive. Too many of us—many in this Chamber, in fact—have experienced a phone call and that phone call is one we never, ever forget because it is such a senseless tragedy and needless death when someone gets

drunk and decides to get into a vehicle and it results in the death of another American.

Let me make a couple of additional comments and then I will complete my presentation. We know from studies that have been done that prohibitions on open containers of alcohol in vehicles—the laws that exist—have made a difference. They have deterred both moderate and heavy drinkers from driving. We know those laws are successful. In fact, some States have had the laws for many years, and there are a good many studies that describe that success. States with prohibitions on open containers in vehicles have had significantly lower rates of alcohol-related fatalities than States without. States with open container prohibitions have had lower numbers of hit-and-run crashes than States without such laws.

In every single State in this country, the majority, by far—80 percent, 90 percent, 76 percent, 91 percent—of the people say they support passing legislation prohibiting the open container of alcohol in vehicles.

My amendment is not hard to understand. It is simply written. It is a short amendment. The objective of it is quite clear, and the passion with which I have, for 12 years, worked to try to effect this change remains. I don't know how the vote will occur today. I regret that some will decide we cannot take the simple step of saying to the American people that nowhere in this country should you be able to drink and drive. I regret that some will oppose that. My hope is that perhaps the Senate once again today will decide, on this issue, to do what is right. If so, perhaps we can go to conference and do what is right.

We won't know the names of those whose lives we saved, but I can tell you they are young children, high school students, babies, senior citizens, workers, moms, and they are grandpas. A lot of people's lives will be saved if we take this step, pass this requirement, and get people off America's roads who now drink and drive and, in some parts of the country, who drink and drive legally. In my judgment, that is unforgivable. I don't want any American, under any circumstance, to come to any intersection at anyplace in this country and meet someone driving another vehicle who is driving with one hand on the steering wheel and the other hand on the neck of a bottle of Jack Daniels, drinking whiskey, and it is legal. That situation exists in this country and it ought not to.

If this Senate doesn't have the stomach to take that simple step, I wonder whether we have the capability to legislate on much of anything.

That completes my remarks. I don't know what the procedure might be. I expect we will have a vote on that. I suggested that the manager of the legislation, the chairman, accept it by unanimous consent or by a voice vote, or at least vote for it. I don't know what the chairman intends to do.

Mr. INHOFE. Mr. President, I appreciate the choices, but it is going to be none of the above. I know the Senator is very passionate about this issue. I also know that currently in title 23 there is this 1.5 percent that is taken out of the programs it is designed to be used for and put into other programs, such as the section 402—the alcohol-impaired driver countermeasures and all that. Now, this is different in that it takes money away—well, look at it this way. The States pay the taxes that go into the Federal Government, and then we take those and go back to the individuals and say: Unless you do something in the wisdom of us here in Washington, even though your State does not agree with it, we are going to withhold your money.

Let me share a short story with my friend from North Dakota. Many years ago, I was elected to the State legislature. My first trip to Washington was 1967. Do you know what it was for? To testify before the Environment and Public Works Committee protesting Lady Bird's Highway Beautification Act of 1965 because of this very reason: philosophically using money that comes from the State to blackmail them to do something, however good the cause.

I was sympathetic with Senator WARNER on his seatbelt amendment, but I had the same objections. I think the Senator is going to find some philosophical objections to his amendment. Yet I assure everyone within earshot, the Senator from North Dakota is very passionate about this issue, he believes in it, but I will respectfully vote against it.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, this most surely is a mandate, and those who believe no mandate is worthy ought to oppose this.

I say to the Senator from Oklahoma, the proposal that has existed now for some years in which we have tried to encourage the States to comply is a very simple proposition that has not worked.

The encouragement has been to say you will lose highway construction money that will go into hazard mitigation if you don't comply. Fourteen States have not complied. In some States, it is legal to drink and drive. I say this to my friend from Oklahoma, if ever there is a case for a mandate, it ought to be to say that, as a nation, we have a national purpose and a national interest in deciding that nowhere in this country on no public highway shall it be legal to drink and drive at the same time. I think there are enough Americans who understand the consequences of this and the tragedy of it to understand why it is necessary for us to be aggressive.

We can decide that we don't like mandates. That is perfectly acceptable. But that then will not solve this problem. I guarantee, if we pass this legislation and the other 14 States comply, lives will be saved.

In any event, aside from the mandate issue, I don't expect there is one person in the Senate who will come to the Chamber and say: I really think it is good public policy to allow people the choice, to let people choose whether they want to drink while they drive. If someone has a hankering thirst for whiskey and a powerful need to drive at the same time, God bless them, get them on the road. There is not one Senator who will come to the Chamber and say that because that is nuts and we know it.

There is no justification for allowing anybody in this country to drink and drive. None, none at all. If this Congress cannot take baby steps in the right direction dealing with public safety, then a lot more lives will be lost. This is not radical. This is easy. This is not complicated. This is simple.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I do not wish to speak on the amendment. I wish to speak on the bill.

First, I have great respect for the chairman of the committee and the ranking member. I understand this is one of the toughest jobs we have, trying to draft a highway bill which everybody thinks is fair. I suggest it is an impossible task because someone is going to benefit and someone is not. All we can do as Members is try to make our case as to why our respective States should be treated in a manner that befits its condition.

In the Commonwealth of Pennsylvania, we have historically benefited from the Federal highway program. We have benefited in the sense that more money comes to our State than we have paid in taxes to the Federal highway fund.

I would make the argument that is as it should be. Of course, every Senator will stand up and say that is as it should be, everyone should be a donee State and, of course, that is impossible to do.

The question is, Why should States be donor States and why should States be donee States? I will give my rationale, which I think is the rationale underpinning the whole reason the Federal Government gets involved with highway programs.

Of course, all of our States have highway departments. All of our States have departments of transportation. All of them have gas taxes, excise taxes that raise money for the purpose of providing roads. The question is, Why does the Federal Government do what is already being done by the States? There is one overriding reason.

Originally, the Interstate System was designed for moving defense items around in times of war. That was the Interstate System. The reason for the Federal Government's involvement has to do with interstate commerce. And the reason for a Federal gas tax is to make sure there is a network of highways that facilitates interstate commerce.

For example—and I use the example of Florida—you want to make sure, if you are an orange grower in Florida, that you get your products before they perish to market over a system of roads. So you are willing in Florida, which has virtually no interstate traffic, to pay a little bit more for Georgia, South Carolina, North Carolina, Virginia, Maryland, and Pennsylvania to have good roads so you can get your products up to New York, Boston, and places such as that.

The idea is that States that may not have a lot of cross-traffic are willing to pay other States that do to facilitate commerce on behalf of that State. That, to me, is a very logical reason for there to be a Federal gas tax.

That being the premise of my discussion, I want to get to my State. One additional premise. What causes a lot of trouble for roads? There are two major causes that I can think of—there may be more and I will be happy to hear them. The two major causes are weather—and I challenge anybody to go out in the DC area and drive around, now that we have had a lot of freezing, thawing, snow, and ice, and look at all the potholes. It is not a common occurrence in this area because we don't have a lot of thawing and freezing generally. We do now. We are having weather like Pennsylvania.

A lot of freezing and thawing beats up the roads in combination with what? Really the biggest thing that beats up roads is weight, heavy trucks—heavy trucks pounding and beating up roads. Heavy trucks, in combination with freezing and thawing, really kick a lot out of the roads.

A premise of my discussion is, No. 1, what is the purpose of this bill? The purpose of a Federal tax is to facilitate interstate commerce in those States that benefit from the cross-traffic that occurs in other States that don't get an economic benefit. I remind my colleagues, if a heavy shipment is going from Florida to New York and it goes through the State of Pennsylvania, Pennsylvania gets all of the aggrieved road problems and none of the economic benefit.

Weather and heavy truck traffic. Let's look at the situation in my State. Why do I bring up my State? Because my State historically has been a donee State. Historically, we have benefited from the Federal program. Why?

The reason we benefited, based on the premises I laid out before, is because we get a heck of a lot of cross-State traffic, heavy truck traffic that neither originates nor is destined for our State. In other words, our State gets no economic benefit from heavy trucks in large numbers rolling through our State.

Let me give you the numbers. As far as ton miles—what am I talking about here? Heavy trucks, weight that hurts highways weight that destroys highways, disproportionately to car traffic.

As far as ton miles, we are fifth in the country in ton miles—fifth in the country in ton miles in our State.

Now, that does not necessarily say Pennsylvania deserves more money because we get all of this heavy traffic. Let's look at an additional factor which I think is vitally important—in fact, more important when it comes to this formula—and that is how much of that heavy traffic is just going through our State and does not stop, how much of that traffic gives no economic benefit to our State.

We are third in the percentage of heavy truck traffic going through our State that does not stop. Forty-seven percent of the heavy truck traffic going through our State does not stop in my State. Our State gets no benefit from these heavy trucks beating up our roads and rolling through our State. There are only two States that have a higher percentage, and that is Indiana and Ohio. Which States have more heavy truck traffic than Pennsylvania? Well, Texas does. They are No. 1. Texas, obviously, is a much bigger State than Pennsylvania, but only 15 percent of the traffic going through Texas is not originating or destined for Texas. So they do not get near the amount of cross-traffic that we do. So most of the heavy truck traffic is to some economic benefit either to someone who is getting shipped the goods or shipping the goods.

What is the second one? California. Only 2 percent of the heavy truck traffic going through California is just going through California and not stopping there. So my colleagues can see what I am talking about. It is not just that we get heavy truck traffic.

What is the point of this tax? What is the point of this formula? To compensate States that are what we call in the airline business fly-over States. Well, we are a crossover State. Vermont happens to send a lot of stuff through our State—ice cream and milk and all that kind of good stuff. But the fact is, the reason I have not been happy with this bill and have been critical of it and have voted to try to change it is because I believe if we look at the numbers and look at the weather factors we have to deal with, which a lot of the country does not have to deal with, particularly the South, and look at the number of vehicle miles—I mean, look at this. Here is Pennsylvania. These are all the interstates that go through Pennsylvania: I–70, I–76, I–78, I–79, I–80, I–81, I–83, I–84, I–90, I–95, I–476. I–99 is an interstate—but it is not interstate—that is just in Pennsylvania. Look at all of these interstates where heavy truck traffic is trundling through, beating up our highways, with no economic benefit to our State.

What is this Federal tax intended to do? It is to say to States that get no economic benefit from having that traffic go through those States that we are going to compensate them. But what happens in this bill? We actually contribute to other States that do not have near the traffic we do coming through our State for no benefit.

One of those States—and I do not want to pick on a particular State, but to me it is the most dramatic example because a lot of traffic for that State goes through Pennsylvania—is Florida. How many interstates does Florida have? Really three: I–95, I–10, and I–75. I–4 is an interstate but it goes from Daytona to Tampa, so it is not really an interstate. The fact is, there are three.

And by the way, less than 3 percent of the traffic that goes through Florida is originating somewhere else and destined somewhere else—3 percent of all the traffic. In our State, 47 percent of the truck traffic is neither originating in our State nor is destined for our State; Florida, 3 percent. Yet look at what happens. Florida—yes, it is a bigger State. It has more people. I understand that. Do they have ice, snow, and freezing rain in Florida? Do they have heavy trucks running over their roads? Do they service other economies and do other States benefit from the traffic going through Florida? The answer is, no, no, and no. Yet over the 6 years of this bill they are going to get a billion dollars more than a State that is shouldering the burden of trying to keep this economy up and going by carrying truck traffic, heavy destructive truck traffic, through our State.

So one might ask, and I know several have: Senator, why are you so upset about the way this bill is put together? Again, I am not being critical of the chairman or the ranking member. They have a tough job. I am focusing on one aspect. I happen to believe it is a very important aspect of why highway formulas are put together. I am sure the Senator from Oklahoma will tell me, well, there are other factors where Pennsylvania does not stack up. Pennsylvania is a State that does not have as many people as Florida, or is not as big geographically as California or Montana. I understand those are all factors.

Again, if we look at the central premise of why we are here, why do we have a Federal tax program for highways, we have to ask that question. It is not because we want to raise money and just turn it back to the States. I hear it said on this issue that every State deserves 95 cents on the dollar. Let me just say something very clear. Why? Why does every State deserve 95 cents back on the dollar? Why does the State of Florida, with only 3 percent of its traffic is cross-traffic, deserve money from a Federal program that is designed to help facilitate interstate commerce? They are the beneficiary of all of the other States when a truck runs from Florida or to Florida, and the roads get the heck beat out of them. They do not originate in my State. So I am not picking on Florida, but that is the most dramatic example.

The fact is, if this program is designed to help States that are carrying the burden of other States and getting no economic benefit, if that is the reason we have a Federal highway program—and I would argue that is the principal reason we should have a Federal highway program—then States

such as Pennsylvania and Ohio—and my sympathy goes to Ohio. I know Senators DEWINE and VOINOVICH are enthusiastic about the improvements in this bill, and they should be improved. They have been on the short end of the stick for a long time. Indiana and Illinois, the States that are sort of the freeway of the heavy trucks and the bad weather, those are the States that the rest of the States in this country, particularly in the region, should be helping out because they benefit economically by having good roads going through those States.

I think I have a valid complaint. That complaint will go on deaf ears today because this bill will pass and instead of Pennsylvania being a donee State to help compensate us for the 47 percent of heavy truck traffic that goes through our State, for which we get no economic benefit, now we are going to contribute to other States and have the blessing of carrying their truck traffic on top of it. To me, that is unfair. It is an injustice to the people of Pennsylvania who are going to be driving on those pothole-filled roads that are going to be pothole filled because of heavy trucks going through our State, beating them up, and providing no jobs except crews running around trying to fill potholes with tax dollars from Pennsylvania residents.

That is not what interstate commerce is all about. That is not what this tax was designed to do. It is an outrage that the Commonwealth of Pennsylvania is being treated in this fashion. I am hopeful that after my explanation those who are in authority, who can look at this and hopefully fix this problem, will see that we have a legitimate complaint, and we will have an opportunity in conference to try to address an issue which I think is going to hurt interstate commerce and job creation because we are not going to have the quality of roads in Pennsylvania to shoulder that 47 percent of the truck traffic that goes through our State of which we get no economic benefit.

It will hurt my State because in my State the quality of roads will decline. I understand some will say the money goes up in this bill. Yes, the money goes up. That is assuming we get a bill at this level, which is looking increasingly uncertain given the President's comments. So the money probably is not going to go up as much as this bill suggests it will. So keeping the same formula, our increases are going to look less and less, as will every other State.

This bill spends about a 45-percent increase in highway funding. We get a 19-percent increase. Finally, I make the argument that this premise that every State is entitled to 95 cents back on the dollar is what happens in Washington all the time. We set forth a goal and purpose for legislation which is we are putting this bill forward, and we are putting this system forward to help facilitate the interstate commerce of America. That is what it was designed to do. But what we turn it into is: No, this is money coming from my State and I deserve it back.

If that is the case, if that is what this is for, I am for repealing the whole thing and just letting the States raise the money. If that is what we are going to do, let's not bother. If this is all just about raising the level on the Federal level and giving it back in the percentage which they raised it, why are we here? We are here because we wanted to help those States that carry the disproportionate burden of making the economy of the rest of the country work and getting no economic benefit from it. That is what originally, I would argue, the highway formulas have accomplished, at least for my State.

I can stand up and say for Ohio it didn't work that way, and it should have. I don't know what happened that it didn't. I understand for other States it didn't work that way. At least it did for mine, and I hope we can have it work more equitably for the purpose for which this legislation was originally intended.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I commend my colleague from Pennsylvania, Senator SANTORUM, for his very cogent remarks about the highway bill and its effects on Pennsylvania. I associate myself with what my colleague from Pennsylvania has said.

I think it is unfortunate we have a bill which appears to be heading for a Presidential veto. We have a bill which quite a number of States find unsatisfactory.

I compliment the Senator from Oklahoma, Senator INHOFE, the chairman of the committee, and Senator JEFFORDS, the ranking member of the committee, as a whole, for their very strenuous efforts. But I do believe Pennsylvania is not being treated fairly. Senator SANTORUM has gone over the specifics about our State, which has very heavy traffic going through the State, the third heaviest truck traffic State in the Nation. Almost half of the trucks which go into Pennsylvania do not stop in Pennsylvania. There are very difficult problems of weather, potholes, and highway deterioration that require Pennsylvania be granted more of the funding.

Pennsylvania has traditionally been a donee State, which means Pennsylvania receives more than the funds which Pennsylvania contributes to the trust fund. Now Pennsylvania, for the first time, was turned into a donor State, so Pennsylvania is contributing more to the trust fund than Pennsylvania is receiving. I think that just is not appropriate.

I have also expressed my concern earlier in voting against cloture, on the first cloture vote earlier in the week, about the concerns I have for the size of the budget. There has been a clear-cut statement from the White House that the President is not going to agree with the figure present in the Senate bill. That is why I voted against cutting off debate, because I think to be fruitful in what we are doing here we are going to have to work with the President's figure.

We all know about the ballooning deficit, in the range of $500 billion. We all know about the national debt. We have very heavy expenditures in many areas. We have a budget that has been submitted which grants a very small allocation for discretionary spending. In the context of where we are with the deficit, it seems to me the President is correct, that this bill ought to be pared, at least to some extent.

The bill is ultimately going to have to be signed by the President, although it is a matter of speculation as to whether there are enough votes to override a Presidential veto. But I am not prepared to override a Presidential veto and I am not prepared to support a bill with this funding flow, where there has not been some accommodation with the White House, some accommodation with the President.

There are many steps before the matter comes to a final determination. There will be final action taken by the Senate, which appears to be passage. We will have to see whether there are more than 67 votes in favor of the bill. There will be a conference. Senator SANTORUM and I are continuing to talk with the chairman of the committee and the ranking member and others on the committee to try to get a more equitable share for Pennsylvania. But on this state of the record, I cannot support this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I understand there is a pending amendment, the Dorgan amendment?

The PRESIDING OFFICER. The Senator is correct.

Ms. LANDRIEU. I wish to set that amendment aside temporarily and speak on an amendment which I intend to withdraw.

Mr. INHOFE. Reserving the right to object.

The PRESIDING OFFICER. Objection is heard.

Mr. INHOFE. I have no objection.

The PRESIDING OFFICER. No objection is heard. The Senator from Louisiana.

AMENDMENT NO. 2615 TO AMENDMENT NO. 2285

Ms. LANDRIEU. I send this amendment to the desk for its consideration, but my intention is to speak for about 10 or 15 minutes and then I am going to ask to withdraw the amendment because, unfortunately, even though this is an extremely meritorious concept, I am not certain we have the votes for it at this time, but I thought I should take some time to talk about it.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU] for herself, Mr. BREAUX, Mrs. LINCOLN, and Mr. PRYOR, proposes an amendment numbered 2615 to amendment No. 2885.

Ms. LANDRIEU. 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 establish a program to apportion funds to States for use in the acceleration and completion of coordinated planning, design, and construction of internationally significant highway projects)

On page 39, between lines 22 and 23, insert the following:

(17) FINISH PROGRAM.—For the FINISH program under section 178 of that title, for each of fiscal years 2004 through 2009, an amount equal to 6.4 percent of the amounts received in the Highway Trust Fund (other than the Mass Transit Account) for the fiscal year under section 9503(b) of the Internal Revenue Code of 1986.

On page 389, between lines 15 and 16, insert the following:

SEC. 18___. FINISH PROGRAM.

(a) IN GENERAL.—Subtitle I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

"§ 178. 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 2004 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 in 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 in the fiscal year for the completion of eligible projects described in subsection (b) in all States.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For each of fiscal years 2004 through 2009, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section an amount equal to 6.4 percent of the amounts received in the Highway Trust Fund (other than the Mass Transit Account) for the fiscal year under section 9503(b) of the Internal Revenue Code of 1986.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. FINISH program.''.

Ms. LANDRIEU. Mr. President, I offer this amendment on behalf of myself and Senator BREAUX, Senator PRYOR, and Senator LINCOLN from Arkansas—the two Senators from Arkansas and Louisiana. There are other Senators who are very interested and have given us a lot of encouragement as we moved forward with this concept.

I first want to thank the leaders of this bill for their tremendous work in putting a very balanced transportation bill together. You can see how controversial and emotional some of this debate is regarding highways and jobs. Highways, if not built correctly or built in the right way, or if rail or mass transit isn't provided, if the trade burden is too heavy on one area, can cost jobs, as you just heard the Senator from Pennsylvania speak.

This is a very complicated and very big bill and a very expensive bill, but one we certainly have to find a way to afford because it is the infrastructure on which our economy in large measure is built. It is not the only infrastructure. I would like to remind everyone that schools and education are just as important, but our highways, our rail, and our Interstate System particularly are the foundation for jobs and economic growth.

The concept of the amendment I talk about—again, I am going to withdraw it—is to pull a few percentage points of dollars away from the general program and direct it to the completion of major interstate routes that are in desperate need in order to handle the new international trade and the increased truck traffic and the increased moveable inventories that are in large measure traveling by truck on our highways because of policies we have as a Congress put into place over the last couple of years.

We have an Interstate System to be proud of. We have made mistakes over the decades as we have constructed it. Obviously we have not been as sensitive to the environment when we began this several decades ago as we are today. But it has been a remarkable achievement of the American people, to dedicate their tax revenues and their gasoline tax revenues and general tax revenues. It is a true partnership between the Federal Government and local governments, as we built this Interstate System, primarily built by the Federal Government.

As you can see, these are the major corridors throughout our country. In the early days of the country, as trade was more east-west, as we traded more with Europe and with the Pacific rim, our highways have had to move across the country and of course the whole Nation has been on a westward expansion. It started on the east coast and then moved westward.

The problem now is States such as Louisiana and Texas and in large measure Pennsylvania, Indiana, Michigan, Missouri—the heartland States, these States right here in the middle of the country—are under a tremendous burden as the population has increased. I realize two-thirds of our population lives within 50 miles of a coast. I am from a coastal State so I understand the populations are very heavy. But the populations are also very heavy right here in the heartland and there simply are not enough interstates moving north-south.

That is what this amendment attempts to do, to say to those writing these policies—and all of us have an input in that—let us pay attention to finishing some of these interstate corridors. From Louisiana, the corridors that are most important to us are I–49 and I–69. I will talk about that in just a minute.

Again, the map shows the concentration of interstates is east of the Mississippi River, not west. The Western States, particularly those in the center, need to have additional interstates that are completed. I–49 would affect Louisiana, Arkansas, Mississippi, and others; I–69 which is not completed, Texas, Louisiana, Arkansas, Tennessee, Kentucky, Indiana, and Michigan; I–35, which is not completed, Iowa and Minnesota; the CANAMEX interstate, which is not yet completed, Arizona, Nevada, Utah, Idaho; and ports to plains, Texas, Oklahoma, and Colorado.

Although I did mention Pennsylvania, I want to put up another map. I know the chairman has worked very hard. I am sure he and the staff know these numbers, but 46.6 percent of the truckborne traffic that comes from Canada comes through this entrance right here, and 49 percent that comes from Mexico or through Mexico comes through this point.

The I–69 corridor, which is not finished, is a very important corridor to be completed because other corridors that do exist—there are probably one or two others in this section—are not enough to handle the percentage of the traffic.

The Senators from Pennsylvania, Senator SPECTER and Senator SANTORUM, with New York and Pennsylvania right here, are feeling the sting of a lot of those trucks coming through, not stopping, not delivering goods, not delivering jobs, but creating a lot of traffic, havoc, a lot of potholes, and accidents are coming through these corridors because of the way our economic system is developing.

Do we want to stop the economic growth? Absolutely not. But we have to provide for it. That is basically what our amendment attempted to do.

I wish to speak for a few more minutes about it, but I am hoping as we draw some attention to this corridor and the percentages of trade that come through on a north-south direction we can get more help and more support.

I think the committee has done a beautiful job. I have worked with the chairmen on both sides. Louisiana has been treated fairly. This is not a complaint from the State of Louisiana. I like the idea that our State, along with many others, is getting a bit more money under the new formula.

I think it sounds very fair when you say every State should get at least 95

percent of what they put in. But the problem with that is it sort of takes away a bit from our concept of interstates and completing interstates. Whether it helps Louisiana or not, ultimately, when these corridors are completed, it helps every State. In this case, two of the corridors I am speaking about would cut through Louisiana, and would be a great help to us, and also to the whole Nation and our metropolitan areas.

That is the underlying concept of the amendment. Again, to generally describe it, it would take a small percentage—6 percent—which equates to about a $16 billion commitment over the next 6 years to finishing anywhere from four to five of the major corridors through the middle part of the country. This is only one. There would be others that would fall into this concept and this amendment.

Let me keep the I–69 chart up for 1 minute and talk about one of five that will be completed in the middle part of the country.

I–69 will serve the Nation's top 25 seaports, 13 inland waterway ports, and 15 of the Nation's top air cargo ports. One of the reasons we need to finish I–69 is because it helps to link our seaports, our waterways, and our airports. That is true for every one of these corridors that would be proposed in this plan.

When I–49 is complete—hopefully one day soon—it will extend from New Orleans to Kansas City, but it benefits the whole Midwest part of the country, from the great port of New Orleans, the port of Houston, the port of Mobile, with huge amounts of trade and traffic which are goods imported and exported moving through these ports. They need north-south corridors. We simply don't have enough north-south corridors. We have a lot of east-west corridors but not north-south corridors.

Once completed, the I–49, I–29, and I–35 corridors will intersect with nine other east-west interstates, including I–94, I–190, I–80, I–70, I–44, I–40, I–30, I–20, and I–10. Building the north-south corridors connects them to the east-west to make this grid workable and helps all of us to be more efficient and profitable as we move goods and services around and through this great Nation.

There is one final point I want to show a picture of. This is a hard picture for me to look at, but the ranking Member from Vermont, Senator JEFFORDS, has actually seen this with his own eyes. He was gracious enough to come down to Louisiana. We were literally standing there looking at a bridge, which is not in this picture frame. The Senator asked me what would happen to the bridge if there was an accident. At that point, a large shrimp trawler literally hit the bridge, knocking the mast of the trawler off and knocking the nets down. The bridge was out of commission for several hours. The Senator witnessed that himself. There is only one way in and one way out.

But the frightening thing for people who are observing and listening to this today is this is the main highway for offshore oil and gas revenues coming into the continental United States. This is LA–1. Eighteen percent of the imports and a majority of the offshore oil and gas drilling that is done happens at the end of this road. With a heavy rain, it goes under water. This road needs to be elevated and protected. The marshlands need to be restored. All of that can be done with the right kind of investment.

This is probably one of the worst examples of not using our Federal resources directly and well, in the sense that $6 billion is produced from the Treasury off the shores of this highway, but we can't get one penny to broaden or fix this highway—that is not true. We have, through the generosity of the chairman, gotten some money to fix and designate this highway. But this is one of the corridors that could be greatly improved by a commitment to finish the major economic corridors we rely on for our security and which give us energy security—but also in the middle part of the country to help us move oil and gas off our shores to light up Chicago, New York, or places in Pennsylvania and Vermont, and move goods through the Gulf of Mexico. This is a major corridor.

My amendment seeks to re-focus only a small percentage—6.4 percent—of our Federal highway spending on finishing our network.

My proposal calls for creating a finish program. The finish program would provide enough funds to finish or substantially finish a few highways of international significance.

In 1995, we dissolved the interstate program and left behind a few major uncompleted segments. From its founding by President Eisenhower until its dissolution in 1995, the Federal interstate program provided a dedicated stream of funds to build our system of interstate highways.

This map of completed interstate's shows the concentration of interstates east of the Mississippi River and the great gaps in the network that exists west of the Mississippi River, particularly north-south interstates.

ISTEA and TEA–21 provided a new program that listed a number of high priority corridors that are vital to national economic development, but did not provide the funding to construct these highways.

The proposed finish program would provide the necessary funding to finish or substantially finish the most significant of these Congressionally designated high priority corridors so that we can begin closing the remaining gaps in our national network.

All of the proposed roads for the FINISH program have already been Congressionally designated high priority corridors, yet we haven't given them priority funding. Many segments of these roads do not exist. Some of these roads exist but are inadequate and are awaiting improvements. All of these proposed road projects link our borders north and south. All of these proposed road projects will bring tremendous social and economic benefits for both their regions and for the Nation.

Of the six corridors that I propose be included in the FINISH program, I want to focus on three specific corridors that I know best because they directly impact Louisiana. These three specific corridors are: I–69, I–49 and LA–1.

When completed, this will span the Nation's heartland, connecting Canada and Mexico through the States of Michigan, Illinois, Indiana, Kentucky, Tennessee, Mississippi, Arkansas, Louisiana and Texas.

Since the passage of NAFTA, Canada and Mexico are now the U.S.'s major trading partners. In 2001, 80 percent of U.S. trade with Mexico and 67 percent of U.S. trade with Canada was transported by truck. The I–69 corridor accounts for over 63 percent of the Nation's truck-borne trade with Canada and Mexico. This map of the I–69 corridor shows that the Michigan border points of Detroit and Port Huron account for over 46 percent of the Nation's truck-borne trade with Canada. The Texas border between Laredo and the Lower Rio Grande Valley accounts for over 49 percent of the Nation's truck-borne trade with Mexico.

I–69 will serve the Nation's top 25 seaports, 13 inland waterway ports and 15 of the Nation's top air cargo airports. This corridor would directly serve 25 million people. I–69 will provide economic development in some of the Nation's most impoverished regions, including the Mississippi Delta and the lower Rio Grande Valley.

In the I–69 corridor States, there are over 9.1 million people living below the poverty level. In 6 of the 9 corridor States, the population in poverty exceeds the U.S. average. Currently, only two sections of this corridor—Interstate 69 from Port Huron, MI to Indianapolis and Interstate 94 from Port Huron to Detroit and west to Chicago—are complete and open to traffic. However, these sections are in need of upgrading. The remainder of I–69, from Indianapolis south to the Mexican border, is in varying stages of completion. Location and environmental studies are near completion and many sections are under design work and construction.

When completed, I–49 will extend from New Orleans to Kansas City. When completed, it will provide a continuous trade highway from Canada through the Midwest and New Orleans to Latin America.

Major portions of the route are already constructed: In Louisiana, from Lafayette to Shreveport as well as other sections in Arkansas and Missouri. Environmental work has been completed for every unconstructed section of the roadway. Records of decision for every one of these sections

have been signed by the Federal Highway Administration. Project funding is the only remaining obstacle to the completion of the Interstate.

I–49 is a nationally significant freight distribution and inter-modal corridor that will service the deepwater ports of South Louisiana, New Orleans, Houston, Beaumont—four of the top five ports in the Nation by tonnage—the Great Lakes ports of Duluth, Superior, Chicago, Gary and Milwaukee, as well as numerous other inland waterway ports throughout the Midwest and plains States.

The I–49 corridor bisects a 420-mile north-south gap in what is potentially one of the most agriculturally and industrially productive regions of our country between I–55 to the east and I–35 to the west. Once complete, the I–49/I–29/I–35 corridor will intersect with nine other east-west interstate highways including: I–94, I–190, I–80, I–70, I–44, I–40, I–30, I–20 and I–10.

With existing rail facilities along the corridor including BNSF, KCS—now NAFTA Rail—and Union Pacific, completion of I–49 will spur the creation and expansion of major inter-modal facilities from Canada to the Gulf of Mexico. Once complete, I–49 will provide $817 million in annual savings to the Nation's economy by reducing travel time, transportation costs and congestion. Over 6 years, these savings will total over $4.9 billion. Coincidentally, the total remaining cost to construct I–49 is estimated at about $4.9 billion. Construction and completion of I–49 will support the creation of up to 206,290 new jobs.

I thank the chairman from Oklahoma and the ranking member from Vermont. Of course, the Senator from Nevada had a great deal to do with this bill. I thank them for their balanced approach. But I suggest to them if we could accelerate the completion of some of our major interstates in the middle part of this country, it would help everyone. It is desperately needed from an economic, security, and safety standpoint for the 30 or 40 States that are tremendously affected by the lack of this kind of infrastructure.

AMENDMENT NO. 2615 WITHDRAWN

Ms. LANDRIEU. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 2615), to amendment numbered 2285, was withdrawn.

Mr. REID. Mr. President, I have just spoken to Senator DORGAN. He is in the cloakroom and he wishes to speak for a few minutes prior to the vote on his amendment. We should advise the Senate there should be another vote in the next 10 minutes or so. Does the chairman agree with that?

Mr. INHOFE. If the Senator will yield, we should emphasize we will not have more 38-minute votes. It could help the situation to be prepared for perhaps two more votes, if that is necessary.

Mr. REID. I appreciate my chairman acknowledging the fact at this stage—things could happen later on—we have another amendment on our side and two more amendments on the other side, and that is all we know of on this bill. There may be other things come up but that is what the managers have been told.

I underline and underscore what the chairman of the committee has said. It is not right to have these votes go 38 minutes. People have other things to do. It is unfair to the Members here, voting on time, to nonchalantly walk in, knowing the vote has been held up. These are not close votes. There is nothing that will be damaged by someone missing a vote. If you have an important engagement, tell that to your constituents. It is unreasonable to do this. I hope later we will acknowledge that and help move the bill forward.

Ms. LANDRIEU. Will the Senator yield for a question?

Mr. REID. I am happy to yield.

Ms. LANDRIEU. Is there any way the votes could be stacked at a set time so we would know about votes later tonight?

Mr. REID. I say to my friend, the junior Senator from Louisiana, we have tried that today and we have had objections to stacking votes. We will continue to try. We would be elated to do that. We know the schedule is extremely difficult for everyone but it is especially difficult for a mother of two children at home.

Ms. LANDRIEU. Senator BREAUX and I are entertaining for Mardi Gras this weekend. We are honored to have 2,000 of our friends in town. But he will have a good time anyway.

Mr. REID. Knowing Senator BREAUX—and this is directed toward him—we hope he does not have too good of a time.

Mr. INHOFE. Will the Senator yield?

Mr. REID. I am happy to yield.

Mr. INHOFE. It is my understanding Senator DORGAN is here and will speak. If he could confine his remarks to less than 10 minutes, we would have no objection to accepting his amendment.

Mr. DORGAN. Mr. President, my understanding is we could dispose of the amendment I have offered in a moment.

Let me again explain this amendment. Six years ago, the Senate did pass an amendment that is slightly tougher than the one I now offer dealing with the issue of drunk driving. It specifically deals with the issue of open containers of alcohol in vehicles.

We understand that nowhere in this country should someone be able to drink and drive at the same time. Yet there are still jurisdictions where that exists. The Senate has had a vote on this. When we previously considered this legislation 6 years ago, the Senate voted in favor of my amendment. It did get watered down in conference. My understanding is that the amendment would now be accepted, and I appreciate that. I have spoken twice on it and have fully explained it. I feel passionately about this piece of public policy.

I thank Mothers Against Drunk Driving and all of the other Senators across this country who dedicate their time and commit their lives to try to do something to make a difference about drunk driving and save the lives of so many in this country who are at risk as long as there are people who are drinking and driving in the United States.

I thank the two managers of the bill.

I yield the floor with the understanding the amendment is accepted.

Mr. INHOFE. 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. DORGAN. May I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DORGAN. Mr. President, my understanding is my amendment will be cleared by an approval of a voice vote and I ask that that occur.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2430) was agreed to.

Mr. DORGAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I would like my fellow Senators to learn of some of the tremendous advances we have been able to make under this bill in the past relative to the changing needs of our Nation. I am going to spend just a few minutes on the North Street Revitalization Project.

This effort is an innovative transportation project in Vermont that demonstrates the value of the Transportation and Community and System Preservation Program, also know as the TCSP.

When the TCSP was authorized in TEA–21, the city of Burlington quickly realized that this innovative program could be used to revitalize a blighted neighborhood called the Old North End.

North Street is located in the heart of Burlington's Old North End.

The North Street revitalization project was born of a need to reinvigorate one of Burlington's oldest and most densely populated neighborhoods, a neighborhood where nearly a third of

the inhabitants fall below Federal poverty levels, where over 85 percent of elementary school children receive free and reduced price lunches.

It has been a wonderful example of a community using transportation funds to fight sprawl by investing in an older urban neighborhood.

I do not exaggerate when I say that efforts to revitalize the Old North End have been underway for over 20 years. The early TCSP Program grant for North Street has been the single most important factor in the success that the project is finally achieving.

I am pleased to report that the project is out to bid and construction will commence this spring. In addition, business activity in the neighborhood is way up and housing investment is increasing. The optimism is infectious and the infrastructure work has barely just begun.

As you can tell, I am very excited by this project. But I have chosen to highlight the project for another reason.

The North Street revitalization project is an excellent example of the benefits of the TCSP. The TCSP allows projects such as this one to develop all over this country. It encourages communities to consider the ways in which transportation investment can improve mobility, economic vitality, and quality of life.

I am pleased to say that we have continued this program in our reauthorization package and increased the funding associated with it. This is only one of the many excellent programs that this bill authorizes.

Mr. President, 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. 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. GREGG. Mr. President, I just want to speak briefly because there has been some talk and discussion floating around the Chamber that one of the proposals that is being considered is to use customs fees to try to fill the failure of this bill to meet its budget obligations.

As we have discussed earlier, the bill is about $24 billion over budget, minimum. I think that is a conservative figure, but that is the number that is being accepted as the number that is given.

Unfortunately, a lot of the additional spending in the bill, rather than coming from the highway trust fund, which is where it logically should come from because the highways should be paid for by the highway trust fund, comes from a variety of movements of dollars, which essentially ends up with the general fund funding the highway trust fund from between about $226 billion up to about $255 billion, I believe. Off the top of my head, I think those are the numbers that are picked up by general fund activity that is now alleged to be highway fund activity, which is inappropriate. We should pay for roads with highway fund activity.

But I just want to put a marker down that if we—on top of all this other gamesmanship as to how this is being paid for, and the deficit, which is being added to by this bill—move to try to use customs fees to give a figleaf of financial correctness to this bill, we would be making a serious and inappropriate error.

First off, the use of customs fees would be a direct raid on the general fund because it would mean that fees, which are dedicated and which go into the general fund and would support the Customs Service, and anything else the general fund needs to spend them on, would then be moved over to the highway fund. That would be inappropriate because that would mean, yes, it might fill up the highway fund with more money, but it would take money out of the general fund, and you would have to borrow to cover that and you would end up aggravating the deficit to the extent you did that.

So it would not accomplish anything other than to give you a figleaf approach to fiscal responsibility. But even more importantly, this whole issue of customs fees has been around the track so many times. It has been used so many times here that I would think people would start feeling a little reticent about trying to use it again. Literally, customs fees have gone around the track probably more times than Seabiscuit.

I just want to list a few times we have used customs fees—the same customs fees, by the way.

We used customs fees to pay for H.R. 7 in the 107th Congress, which was the Community Solutions Act. We used customs fees to justify—we never used them. We use them to justify that the bills are within the budget. That is what this whole exercise is about. We used them again in the 107th Congress on the Bipartisan Patient Protection Act. We used them again in the 107th Congress for the Personal Responsibility, Work, and Family Promotion Act. We used them again in the 107th Congress for the American Competitiveness and Corporate Accountability Act. We used them again in the 107th Congress for the Trade Adjustment Assistance Improvement Act. We used them again in the 107th Congress for the Servicemembers' Tax Assistance for Noteworthy Duty Act.

That was the 107th Congress. We used the same custom fees six times in the 107th Congress. That is amazing, gamesmanship at a new level.

Then we move to the 108th Congress. How many times have we used custom fees so far in the 108th Congress? Well, it was used for the Prescription Drug and Medicare Improvement Act; the jobs and growth tax relief reconciliation bill. It was used for the Relief for Working Families Tax Act. It was used for the Relief for Working Families Tax Act twice, in fact. It was used for the Rebuild America Act by the House. It was used for the Health Care Coverage Expansion and Quality Improvement Act. And, of course, we are considering using it for this act.

At some point we have to have some modicum of fairness and forthrightness about what we are doing around here. I will strongly resist using custom fees as a vehicle for giving a figleaf of fiscal accountability to this bill because that is all it is. It is not legitimate to use it. We know it won't be used. Its only purpose would be so that people could come to the floor and argue that they somehow paid for this bill when, in fact, the practical effect of it is that it will never be used. It has not been used yet in the prior 13 instances I have cited. And if it were used, it would mean a direct shift of funds out of the general fund into the highway fund, creating a deficit situation in the general fund, aggravating the deficit to the extent that it was scored as being used in the highway fund.

It is bad policy. I wanted to lay down an early marker that this should not be a manner in which we proceed on this bill.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. BOND. 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. 2502 TO AMENDMENT NO. 2285

Mr. BOND. Mr. President, I have at the desk amendment No. 2502. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 2502.

Mr. BOND. 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 strike the highway stormwater discharge mitigation program)

Beginning on page 876, strike line 12 and all that follows through the matter between lines 6 and 7 on page 880.

Mr. BOND. Mr. President, this amendment to S. 1072 preserves the basic expansion of eligibility for storm water mitigation projects but removes a mandatory 2 percent set-aside for storm water which was added in committee. While I protect storm water mitigation project eligibility for funding from highway programs, I oppose sending another Federal Government mandate to the States, telling States they must set aside 2 percent of their surface transportation programs for

storm water activities regardless of the actual need in the State.

There are few greater champions of Federal funding for water quality and drinking water in the Senate than myself and my colleague from the State of Maryland with whom I chair and serve as ranking member—depending upon who is in control—of the appropriations subcommittee which funds water projects and programs in the EPA budget. Senator MIKULSKI and I year after year have squeezed the rest of the budget to put badly needed funding for clean water and safe drinking water measures into our bill because we know there are great needs. Every year we have to restore hundreds of millions of dollars that OMB, on a bipartisan basis, always takes out of the State revolving fund.

Last year we appropriated $1.35 billion to States for the clean water funds and $850 million to States for their drinking water funds. Every year we appropriate millions of dollars to protect, sustain, and restore the health of our Nation's water habitat and ecosystems.

We spend millions of dollars funding water programs for the Chesapeake Bay, the Gulf of Mexico, Lake Champlain, Long Island Sound, and the Great Lakes. Last year we sent hundreds of millions of dollars more to member States for targeted investments in their water infrastructure. We do that every year for our colleagues because we believe so much in providing clean and safe drinking water for our families and local communities.

In this highway bill, I was also proud to join my colleagues, Senators INHOFE, JEFFORDS, and REID, in expanding the eligibility for storm water mitigation projects. Current law allows States to spend surface transportation program funds on storm water mitigation needs. In S. 1072, section 1601, we expand storm water eligibility to allow States to spend National Highway System funds on storm water mitigation needs. States can spend up to 20 percent of a project's cost on environmental restoration or pollution abatement such as storm water mitigation. However, that amount will be left up to the State and the individual conditions at the site of each project. We should not set an arbitrary number in Washington and force States to set aside that amount.

We are not talking about a small amount of money. A mandatory 2 percent set-aside equals almost $1 billion over 6 years. That is $1 billion States must divert from their surface transportation programs regardless of need. By now, many of you have heard from State DOTs that they oppose a mandatory set-aside. Almost none of them, and nobody who is running highway programs, likes to have mandatory set-asides. Our States certainly do not appreciate mandatory set-asides from Washington.

We also must remember that not every State has the same environmental conditions or needs. A State's need to spend highway funds on storm water will differ depending on the individual conditions in each State or each part of the State. States in the upper Midwest, States in the West, States in the Great Plains will not see the same rainfall nor storm conditions as States in the East. Nonetheless, all States will be forced to set aside 2 percent of their STP funds for storm water unless this section is struck.

What sense does it make for a State which has tremendous highway needs but relatively few storm water needs to set aside 2 percent? Let me repeat, with my amendment, storm water mitigation projects are still eligible for funding from highway programs. We preserve and expand storm water funding eligibility. States will be free to spend the amount of money they believe necessary to address storm water needs in their State. There may be years in which Missouri spends more than 2 percent on storm water needs. But our State has heavy rainfalls.

This vote is about whether we want to impose another mandate on our States. I urge my colleagues to turn back this Federal Government mandate to say what the needs of every State are. There may be many States for which this is not appropriate. I urge my colleagues to let States decide how best to spend their highway dollars, and I urge support of my amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

Mr. REID. If the Senator will yield, the four of us—the chairman, ranking member, chairman, and ranking member—have worked tirelessly to arrive at a point where we can complete this bill. This is an important amendment.

The Senator from Missouri has worked with us, the three managers—if I said weeks, it would not be valid; it is months. We are at a point where we simply cannot do this. I will make a commitment to my friend from Missouri that when we get to conference or when we work on this or do our deal with the House, I will personally be involved in this and try to work out something that would be satisfactory to the Senator from Missouri. It simply won't work at this stage. I ask that the Senator withdraw the amendment at this time.

AMENDMENT NO. 2502 WITHDRAWN

Mr. BOND. Mr. President, I appreciate the words of my cohort on the Surface Transportation Subcommittee. We have worked together over the years. I raise this point for the entire Senate so they know we are going to have to address it in the Congress, because there are many States that I am sure we will hear from that do not need this. In order to move the bill along and to avoid causing our colleagues to have another vote—perhaps those who need to get away—I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I am pleased the Senator did that because it was to strike a provision I worked on in the bill.

Mr. President, I rise to express my opposition to the amendment offered by my colleague Senator BOND to strike the Committee's stormwater mitigation program.

The full committee adopted an amendment I offered with many of my colleagues to begin to address—for the first time—an unfunded Federal mandate on our localities.

I regret that my colleague opposes helping our localities with the serious financial burdens imposed by the Clean Water Act to correct stormwater runoff problems. I have heard him tell the Senate that this stormwater provision is a mandate on our state highway departments, but he has not told you the rest of the story.

The rest of the story is that the existing Clean Water Act regulatory program requires all of our communities to obtain a permit for their stormwater discharges and flood control projects. According to many organizations who are on the front lines in dealing with this problem, they strongly support this modest provision to begin to address pollution problems from existing highways.

This modest program of $160 million annually is a very small part of this massive $311 billion bill. It begins to fund an unfunded Federal mandate. Most importantly, our states want this program.

The Association of State and Interstate Water Pollution Control Administrators—our state officials responsible for improving the water quality of our rivers, lakes and streams—have written urging that the Senate retain this small program.

For the benefit of my colleagues, I refer to a portion of the State officials letter:

> Communities throughout the nation, including numerous smaller towns and counties are required under the Clean Water Act to obtain discharge permits for stormwater. Even those communities, which have long understood the value of protecting their drinking sources and recreational waters from stormwater impacts, are already hard-pressed to cope with the cost, as they have been absorbing the costs of discharges from highways. This represents an unfair burden to these communities and we believe it is fair for the transportation funding system to remedy this problem where existing highways and other roads cause significant runoff problems.

The Association of Metropolitan Sewerage Agencies has written that

''This amendment marks a crucial step toward addressing the billions of dollars in expenditures that state and local governments are required to make in controlling stormwater generated by our nation's highways. . . .

Similar letters of strong support have come from the Association of Metropolitan Sewerage Agencies, the Association of Metropolitan Water Agencies, the American Water Works Association, and the Association of State Floodplain Managers, and numerous other groups.

The support for the Committee's provision is strong because everyone recognizes that stormwater runoff from highways is a known impediment to good water quality. Some have calculated that this runoff is the leading cause of pollution for nearly 50 percent of our national rivers, lakes and streams.

Roads collect pollutants from tailpipe emissions, brake linings, oils and other sources. During storms they mix with other contaminants of heavy metals and road salts that wash into our waters. This result is seriously degraded water quality of our rivers, lakes and streams.

Today, every new highway must include methods to control this runoff. But, there is a large need for our states and local governments to construct stormwater mitigation projects on existing roadways to meet the requirements of the Clean Water Act. Under federal regulations, even our smallest communities and counties will be required to implement projects to control stormwater runoff.

The modest program in the Committee bill requires States to dedicate 2 percent within the Surface Transportation program—one category of highway funding—to control stormwater runoff from our roads.

It is true that stormwater mitigation projects are eligible for funding under the NHS and Transportation Enhancements program. However, the funding demand for these programs is great.

I have also heard the author of this amendment that will punish our local governments say that we will work to fund these stormwater activities under the Clean Water Act. The Environment and Public Works Committee, however, has struggled unsuccessfully with financing our Nation's multi-billion dollar water infrastructure needs. We've come to no consensus or new financing package.

In 2000, EPA estimated at least $8.3 billion over 20 years in local funding needs to address stormwater requirements. The modest program in the bill before us provides approximately $958 million over 6 years. This is simply some small relief to our localities to address pollution from existing highways.

Our States want this program. Our communities deserve to have some relief from this unfunded Federal mandate.

For the benefit of all of my colleagues—make no mistake—this is not the only requirement on how States spend Federal highway dollars. The bill before us is full of mandates on our States. Even the proponent of the amendment has offered his own mandate in the bill. It requires that States divert 2 percent of the National Highway System funding to connector roads that are not even on the National Highway System map. Perhaps this is a worthy goal, but again, it is a mandate on our States on how they use their Federal highway funds.

I ask my colleagues to carefully consider this amendment and ask that they not move to take away this critically needed funding from our localities and work to meet unfunded mandates.

The PRESIDING OFFICER. The Democratic whip is recognized.

Mr. REID. This has been a long, arduous 2 weeks for me and the other managers. We are at the point now that I understand we can soon go to final passage. If there is something to the contrary, I would certainly like to know about that.

Prior to final passage, the chairman of the committee has some matters that need to be disposed of. I wanted to alert everybody we are getting close to the end of this matter.

Mr. INHOFE. Mr. President, we have the managers' amendments that we have talked about for a long period. I ask unanimous consent that they be agreed to.

Mr. WARNER. Mr. President, reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not have the floor and cannot suggest the absence of a quorum.

The Senator from Missouri is recognized.

Mr. TALENT. Mr. President, yesterday, I filed an amendment with Senator ALLEN and Senator BURNS to the Household Goods Moving portion of SAFE–TEA. Under the circumstances, I will not call it up. The amendment's purpose is to enact meaningful consumer protections that also safeguard small businesses and their employees.

Each year 1.5 million households hire commercial moving companies to move their household goods to another state. There are almost 3,000 federally registered motor carriers who transport household goods across state lines. Most of these moving companies are small businesses—Mom and Pop family-owned businesses.

In addition to the thousands of licensed small business movers, there are countless unlicensed and unregistered movers. Everyone agrees that the vast majority of movers provide quality service in an ethical manner, but there are some ''bad apples'' that don't follow the rules to the detriment of consumers and other reputable small businesses. These ''bad apples'' take advantage of consumers with misleading estimates, baiting them with deals that are ''too good to be true.'' They're also known to hold customers' household goods hostage while they demand higher fees.

The predatory tactics of these ''bad apples'' give the entire moving industry a bad name. They hurt consumers and they threaten thousands of legitimate small business moving companies, endangering the jobs of the tens of thousands of employees and the families that depend on them. Congress needs to commit itself to enacting reforms that will help stop unscrupulous movers and their predatory tactics and protect consumers and the small business jobs in the moving industry.

I appreciate Senator MCCAIN and his staff's efforts in this area. Many of the reforms in the Household Goods Moving portion of SAFE–TEA accomplish these goals. I believe that Congress can enact legislation that will protect consumers, small businesses and the thousands of jobs in the household good moving industry. My amendment works to punish ''bad apples,'' protect consumers, safeguard the thousands of legitimate small businesses, and sustain the good jobs in the moving industry.

When I was Chairman of the Small Business Committee in the House, I learned that sometimes regulation offered even with the greatest of intentions could unfortunately have an opposite and devastating impact on the people it intended to protect. It is clear that some of the provisions in the underlying bill will not hinder unscrupulous ''bad apples,'' but instead seriously harm legitimate small businesses and endanger American jobs and the families that depend on them.

I have some concerns about the consumer protections that were attached, because some of them operate in a way where they burden the honest businesses and do not stop the dishonest ones. That is always the nightmare with regulation when we do it. Sometimes they end up making it difficult for the people who are trying to comply with the law, and the corner cutters still cut corners and we end up with the worst of both worlds.

There is a provision in the bill that was added in the Commerce Committee, for example, that would allow lawsuits against movers who don't use the absolute shortest route to get the household goods from one place to another. That is very understandable because some of the bad apples will drive around town in order to build up the price and get a higher fee for the moving.

At the same time, they are very legitimate reasons why a business may not take the shortest route—safety reasons, for example. What I am saying is we need to look at the provisions that were enacted in committee in conference to make certain that we do the best job we can do of protecting consumers while partnering with the legitimate small businesses, because they want the bad apples out of the business as well. All of us have had an experience or we know of friends who

had experience with these businesses that want to hurt everybody.

We want to protect consumers. We have to do it in a way that partners with the good companies. We don't want to drive their costs up, which will then be passed along to consumers. Worst case, some of these legitimate small businesses will have to go out of business. These issues deserve further consideration in the conference.

Our amendment offers commonsense solutions.

My amendment protects a legitimate small business mover's right to collect for additional work requested by the customer at the time when his or her goods are delivered.

My amendment enhances consumer protections. State enforcement laws should strictly protect consumers by prohibiting movers from holding a customer's goods hostage.

My amendment defends legitimate small businesses' right to recoup attorneys fees if they are determined to be ''in the right'' by a court.

My amendment also addresses provisions in the underlying bill that have little to do with consumer protection.

For example, if the underlying bill is passed as written, attorneys could legislate through prosecution the route a legitimate small business mover must take when delivering household goods.

Admittedly, this provision was designed to protect consumers from ''bad apples'' that literally take their customers for a ride, using longer routes and charging higher fees.

But, unfortunately, the way the provision is written, mom and pop small business moving companies would also suffer and be exposed to lawsuits and fines that will threaten their business and the jobs of their employees. Attorneys should not determine the fate of legitimate small business movers.

Small business movers are experienced and they know which highways to take in traffic and in bad weather. In St. Louis, Missouri, we have two central highways: highway 40 and 44. It's clear to anybody who travels on those highways that 44 is often the quicker route in rush-hour traffic. But, this provision would take away an experienced drivers right to choose. It could be mandated that he use only highway 40.

Legitimate movers don't make their money scamming customers; they make their money getting shipments on and off, on-time.

Despite the fact that this provision is intended to protect consumers, it could have the opposite effect, requiring movers to take less efficient routes; routes they knew were slower because they drive on those roads everyday; and all because an attorney decided it was quickest.

As a result, the longer shipment times would translate into higher costs for consumers since carriers would be forced to petition for higher fuel tax surcharges, a cost born by consumers.

I believe that it's important in situations like these to reach out to the stakeholders in the community of legitimate small business movers those who are affected by these provisions and partner with them to determine the proper solution. Everybody wants to stop the ''bad apples.''

This list goes on and on. Many of the provisions do not protect consumers and force unnecessary and burdensome regulations on mom and pop small businesses across all 50 States; possibly causing an increase in carrier rates across the country; harming legitimate small businesses—and not the ''bad apples''; and threatening the jobs and livelihoods of the thousands of employees in the moving industry. These issues deserve further consideration in conference and I urge my colleagues to continue their good work; and to partner with the small business moving community to punish the ''bad apples'' and enact meaningful consumer protections, safeguard small businesses and protect the jobs of the tens of thousands of employees and families that depend on them.

I yield the floor.

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

Mr. BOND. 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. BOND. Mr. President, earlier today the Chairman of the Senate Commerce Committee was here on the floor charging Chairman INHOFE and our EPW Committee with inserting Amtrak legislation into our highway bill. Shortly thereafter, I was glad to see that same Senator rise to apologize for this incorrect statement. Because the truth is, that the provisions the Senator was talking about are actually in his own committee's title of this bill.

So now that it is established not even the Chairman of the Commerce Committee knows what is in his title, I think it is only appropriate to address some of the problems in that title.

Earlier today I discussed a few of the problems I have seen in that title. At that time, I pointed out that we still have not heard from the Commerce Committee Chairman what is in his title. Well, we still haven't had an explanation . . . and if that committee's chairman didn't know that the Amtrak provisions were actually in his own title, it makes me wonder if anyone actually knows what is in the Commerce Committee title of this bill.

That said, I am back here again to briefly address a few more problems with the Safety Title of this bill. And in an effort to safe time, I will not call up amendments to fix these problems, but I hope that these concerns can be addressed in Conference.

I am concerned that certain provisions in the Commerce Committee's Title go a little too far in specifically directing the National Highway Traffic Safety Administration to publish final rules on a wide variety of new vehicle safety requirements. I am all for highway safety, but to assume that today, we know enough to tell NHTSA exactly when it must promulgate over a dozen rules, covering many elements of vehicle design to crash testing, over the next few years, seems disruptive to NHTSA's safety priorities. I am not an expert in this area, but let me read what the administration thinks of this amendment. I remind my colleagues that earlier today we were told by the Commerce Committee Chairman that none of the statements in the SAp were in relation to his committee's title. Well, this if from the statement of administration position on this provision issued February 11.

''The administration strongly opposes mandate rulemakings for NHTSA and the FMCSA. These provisions predetermine timetables and outcomes without adequate grounding in science, engineering and proof of net safety benefits. By prescribing specific requirements and mandating priorities, these provisions will delay or interfere with ongoing safety initiatives and may have the unintended consequence of redirecting agency resources away from programs that will do more overall good for safety.''

My main concern is that these mandates disrupt NHTSA's safety priorities and might not be the best use of its resources. We have passed laws that govern the issuance of motor vehicle safety standards requiring NHTSA to consider all available safety data when setting new standards and that those new standards must meet the need for highway safety, as well as be reasonable, practicable and appropriate for the vehicles to which they apply. This amendment, by telling NHTSA it must promulgate certain standards, is inconsistent with existing law and has the potential to require NHTSA to publish standards that might not be in the best interest of highway safety. I hope that the sponsor of the amendment will agree to work with me, and others, to ensure that we actually improve highway safety and not do harm by requiring the experts at DOT to divert valuable and limited resources from their true safety mission.

Mr. President, this debate is not personal. But I cannot stand idly by and have one Member or a handful of Members tell us all that the EPW Committee is a budget buster, or is the only part of this package that carries a veto threat, or that Amtrak provisions are in our title, or on and on.

The truth, Mr. President, is that this bill is paid for, is budget neutral based on the Finance Committee title which pays for increases over the budget resolution. For the Record, of all the titles above the budget resolution (though paid for), it's the Commerce Committee title that is the highest increase over their allocation. In fact, that title is a 50-percent increase over the budget allocation.

Mr. President, it is also true that the Commerce Committee title is new. It is

not what was reported out of Committee, and it was not altered by the amendment process here on the floor. Instead, it was changed by the Commerce Committee staff, and apparently not even the Chairman knows what is in it.

I want a good highway bill. There are some real problems with this title, and I urge my colleagues to take a close look at it. And I hope we can address some of these harmful mandates in Conference.

We had thorough discussions when other safety provisions had come forward. This one has been slipped into the commerce title. There are some real problems. Earlier today, we were told by the Commerce Committee that none of the statements in the Statement of Administration Policy were in relation to the committee title. Let me read from the Statement of Administration Policy on this provision issued February 11:

The administration strongly opposes the numerous mandated rulemakings for NHTSA and the FMCSA. These provisions predetermine timetables and outcomes without adequate grounding in science, engineering, and proof of net safety benefits. By prescribing specific requirements and mandating priorities, these provisions will delay or interfere with ongoing safety initiatives and may have the unintended consequence of redirecting agency resources away from programs that will do more overall good for safety.

I think this provision disrupts NHTSA's safety priorities. We passed laws that govern the issuance of motor vehicle safety standards. Unfortunately, they are not going to be able to use the full scientific and engineering information they wish to if they are forced to take the provisions in this amendment.

This is inconsistent with existing law. I hope in the conference we will work to change these so we do not foul up the efforts of NHTSA to use the best safety and engineering to achieve goals that have not been discussed or debated on this floor. I hope we can change that part.

Finally, the truth is, this bill is paid for. It is budget neutral based on the Finance Committee title. For the record, all of the titles in the budget resolution are paid for. It is the Commerce Committee title that is the highest increase over the allocation. It is 50 percent over the allocation. These are problems we are going to have to deal with in the conference. I assure my colleagues we need to address all of these issues.

I close my comments by thanking the chairman, Senator INHOFE, the ranking member, Senator JEFFORDS, and my good friend and colleague, Senator REID of Nevada, for the cooperative way we have worked through this bill. There is a long way to go before we get to a conference agreement with the House that we hope will be able to include concerns by the administration so we will be able to move quickly to get a good highway bill which will deal with our tremendous overwhelming transportation safety problems in the United States and put people to work sooner rather than later.

Finally, as I said, I support the proposal raised by my colleague from Missouri, and I hope that can be included in the conference.

I urge my colleagues to support passage of this bill to move the highway and transportation bill forward and get a good bill that can make a great deal of difference for the economy, for jobs, long-term economic growth and, most of all, for the safety of transportation in the United States.

I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2333 TO AMENDMENT NO. 2285

Mr. REID. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. HARKIN, proposes an amendment numbered 2333 to amendment No. 2285.

Mr. REID. 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 encourage States to give priority to pedestrian and bicycle facility enhancement projects that include a coordinate physical activity or healthy lifestyles program)

On page 389, between lines 15 and 16, insert the following:

SEC. 18___. PRIORITY FOR PEDESTRIAN AND BICYCLE FACILITY ENHANCEMENT PROJECTS.

Section 133(e)(5) of title 23, United States Code, is amended by adding at the end the following:

''(D) PRIORITY FOR PEDESTRIAN AND BICYCLE FACILITY ENHANCEMENT PROJECTS.—The Secretary shall encourage States to give priority to pedestrian and bicycle facility enhancement projects that include a coordinated physical activity or healthy lifestyles program.''.

Mr. HARKIN. Mr. President, my amendment concerns transportation enhancement projects, and the need to promote physical activity and healthy lifestyles. In particular, my amendment gives priority to transportation enhancement projects that include a coordinated physical activity plan.

Over the last 20 years, new public health threats have emerged—obesity and the chronic diseases associated with poor nutrition and lack of physical activity. In fact, chronic diseases now account for 75 percent of our Nation's $1 trillion annual health care costs.

The health statistics on obesity are staggering. According to the Centers for Disease Control and Prevention, two-thirds of Americans over overweight or obese, and the rates of obesity have doubled in children and tripled among teenagers since 1980.

Obesity also increases the risk of diabetes, heart disease, stroke, several kinds of cancer, and other health problems. Approximately 300,000 deaths a year in the United States are associated with obesity and being overweight.

Spiraling rates of obesity don't just affect individuals, they place a burden on the average taxpayer and on the Federal Government. The U.S. Surgeon General estimates that obesity costs the Nation $117 billion a year in health care and related costs. Physical activity alone costs over $75 billion per year.

There is no single solution to the problem of obesity and overweight. This is a complex problem, and it must be addressed creatively and comprehensively. One opportunity is before us today in the transportation bill.

The amendment that I am proposing today concerns transportation enhancement projects, a long standing transportation program under which a large share of our hiking and bike trails on non-Federal lands are built.

Such trails, paths, and projects can play an important role in promoting physical exercise in our communities. My amendment seeks to encourage transportation trail enhancement projects to include physical activity and healthy lifestyle programs. Very simply, within the applications a State or planning organization receive for trail or bike path funding, it gives priority to trail projects that encourage coordinated physical activity or healthy lifestyle programs. It does not shift the balance of funding to trail enhancement projects from other allowable categories. It certainly has no impact on the total dollars that go to enhancement projects.

This amendment does not micromanage funds or tie the hands of States seeking to make choices that are most appropriate to their needs. I believe individual States and local planning organizations should have flexibility to make decisions about their transportation priorities. And my amendment preserves that flexibility.

Possible examples of such efforts might include an exercise course on the side of a trail; or perhaps an exercise program run by a local recreation department. We have had tremendous success with local trails and bikeways.

If we do not start seeking out opportunities to encourage healthier lifestyles for Americans, whether it be in an obvious place such as a child nutrition or health care bill, or in a less obvious bill such as this transportation bill, we will all pay the price—both in our health and in our budgets. I ask for the support of my colleagues on this commonsense amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. TALENT. 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. TALENT. I have an amendment filed at the desk on behalf of Mr. WYDEN and myself. I think we have had it cleared, and I was going to ask unanimous consent that it be adopted. It is amendment No. 2482.

The PRESIDING OFFICER. There is an amendment pending. Is this a second degree?

Mr. TALENT. There is an amendment pending?

The PRESIDING OFFICER. There is.

Mr. TALENT. I will wait until that amendment has been resolved.

I ask unanimous consent that the pending amendment be set aside while I offer this amendment.

Mr. GREGG. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I object.

The PRESIDING OFFICER. The objection is heard.

The Democratic whip.

Mr. REID. Are we in a quorum call?

The PRESIDING OFFICER. We are not.

Mr. REID. What is the matter pending before the Senate?

The PRESIDING OFFICER. Harkin amendment No. 2333.

Mr. REID. To my understanding, there is no further debate on that amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 2333.

The amendment (No. 2333) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

Mr. TALENT. Mr. President, will the Senator from Nevada withhold?

The PRESIDING OFFICER. The Senator from Nevada suggested the absence of a quorum. Does he withhold?

Mr. REID. I withhold.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

AMENDMENT NO. 2482 TO AMENDMENT NO. 2285

Mr. TALENT. Mr. President, I send amendment No. 2482 to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. TALENT], for himself and Mr. WYDEN, proposes an amendment numbered 2482 to amendment No. 2285.

Mr. TALENT. 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 amend the Internal Revenue Code of 1986 to allow tax-exempt private activity bonds to be issued for highway projects and rail-truck transfer facilities)

On page 1298, after line 24, add insert the following:

Subtitle H—Tax-Exempt Financing of Highway Projects and Rail-Truck Transfer Facilities

SEC. 5671. TAX-EXEMPT FINANCING OF HIGHWAY PROJECTS AND RAIL-TRUCK TRANSFER FACILITIES.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to exempt facility bond) is amended by striking ''or'' at the end of paragraph (12), by striking the period at the end of paragraph (13), and by adding at the end the following:

''(14) qualified highway facilities, or

''(15) qualified surface freight transfer facilities.''.

(b) QUALIFIED HIGHWAY FACILITIES AND QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—Section 142 is amended by adding at the end the following:

''(l) QUALIFIED HIGHWAY AND SURFACE FREIGHT TRANSFER FACILITIES.—

''(1) QUALIFIED HIGHWAY FACILITIES.—For purposes of subsection (a)(14), the term 'qualified highway facilities' means—

''(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection), or

''(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under such title 23.

''(2) QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—For purposes of subsection (a)(15), the term 'qualified surface freight transfer facilities' means facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as in effect on the date of the enactment of this subsection).

''(3) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING FOR FACILITIES.—

''(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) or (a)(15) if the aggregate face amount of bonds issued by any State pursuant thereto (when added to the aggregate face amount of bonds previously so issued) exceeds $15,000,000,000.

''(B) ALLOCATION BY SECRETARY OF TRANSPORTATION.—The Secretary of Transportation shall allocate the amount described in subparagraph (A) among eligible projects described in subsections (a)(14) and (a)(15) in such manner as the Secretary determines appropriate.''.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) of the Internal Revenue Code of 1986 (relating to exception for certain bonds) is amended by striking ''or (13)'' and all that follows through the end of the paragraph and inserting ''(13), (14), or (15) of section 142(a), and''.

(d) EFFECTIVE DATE.—The amendments made by this section apply to bonds issued after the date of the enactment of this Act.

SEC. 5672. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''.

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking ''October 18, 2000'' and inserting ''the date of the enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 5674. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine), as amended by section 5673 of this Act, is amended by adding at the end the following new subparagraph:

''(N) Any trivalent vaccine against influenza.''.

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act, or

(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 5675. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

Mr. TALENT. Mr. President, the time is short. This amendment would allow private activity bonds. It has been cleared on both sides. The President supports it. It has been fully offset and I ask that it be adopted.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 2482.

The amendment (No. 2482) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. TALENT. 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. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. FRIST. Mr. President, I know there are discussions going on, but I would like, if at all possible, to begin to bring matters to a close in the next several minutes. While some final decisions are made on this important bill, I will make a closing statement and then we will see what the outcome is on the remaining amendments.

The transportation bill that we have been considering for the last 2 weeks is one of the most important pieces of legislation that we will consider in this second session. It is important not only for maintaining and improving our transportation infrastructure system—something that we talked a lot about over the last 2 weeks—but it is also important, as has been discussed, for creating jobs.

Conservative estimates are that this legislation would create as many as 1.6 million jobs over the life of the bill, and some analysts now believe it can create as many as 2 million new jobs.

This legislation is also important for our Federal-State partnership. The bulk of expenditures in this country for our public infrastructure programs, for building, for expanding and maintaining transportation systems is not Federal dollars but State and local expenditures. The Federal share from all public infrastructure spending in this country averages about one-quarter or 25 percent. That is the Federal share.

Further, at the Federal level annual spending for ground transportation programs represents less than 2 percent of all Federal spending. But this important spending serves as a catalyst for economic growth. I believe it is a small investment we can make in our economy. It is an essential investment in moving our economy forward while also making it safe for us to use our highways and our intercity rail systems.

The funding for our Federal highway and mass transit infrastructure system is complex, it is obscure, and I freely admit that it is confusing. Here in the Senate, the legislation involves at least six standing committees, sometimes with overlapping jurisdiction.

The financing of our Federal highway system includes spending subject to annual appropriations. It also includes automatic or mandatory spending. The financing of these expenditures comes from many sources—from gas taxes, from excise taxes, from user fees, and from general revenues.

But this afternoon, I would like to address in as simple a way as I can my understanding of the Federal spending issue that clearly has frustrated both ends of Pennsylvania Avenue.

Several points: First, this is a 6-year authorization and spending bill. The administration supports enactment of a 6-year bill. While they do not support the level of resources this bill devotes to transportation spending, I hope we will be able to find a compromise with the House of Representatives and the administration that will meet all concerns.

We are currently operating all these programs under a temporary extension that expires on February 29. Before the end of the month, we will have to once again temporarily extend the expiring authorities.

Funds have already been provided for the programs this year in the Omnibus appropriations bill that we enacted last month, but authorization to expend those funds will lapse at the end of this month.

Point No. 2: The bill—or I should say more precisely the four bills—highways, mass transit, safety programs, and financing—establish an overall level of ''contract authority.'' For the next 6 years, this contract authority is estimated to total $318 billion.

What is contract authority? There has been a lot of confusion. I was on the Senate floor as we talked about this bill in the last several weeks. And, indeed, throughout Capitol Hill, people do not fully understand what contract authority is.

Contract authority is created in law, authorizing the Federal Government to enter into contracts and incur obligations in the future but in advance of, or even in excess of, funds available for that purpose.

The funds actually necessary to carry out that contract authority must be provided later—usually later in the appropriations bill—and it is called liquidating appropriations.

Point No. 3: How will this bill before us today, if enacted, impact Federal spending in the future? There has been a lot of focus on spending today, and a lot of fracturing of the discussions on this spending.

Interestingly, the bill also includes language that limits the amount of this $318 billion in contract authority that can be obligated or liquidated over the next 6 years. This bill sets that limit to be $290 billion, which is nearly $28 billion less than the level at which the contract can be set.

If one is concerned about spending, it is this so-called obligation limit that really matters—not the contract authority. Therefore, when I compare what the Senate bill proposes to spend versus the President's budget request, it is a difference of about $6 billion a year.

I am committed to resolving this difference as this legislation works its way in regular order through the Senate and conference with the House.

Fourth and last point: Since this bill limits the amount of contract authority that can be obligated over the next 6 years, one possible solution might be to reduce the higher contract level to a level that we actually believe will be obligated and spent. There may be some who can explain the difference, but simplistically I think that those two—the obligation limit and the contract authority—should be the same.

Indeed, the President's budget sets both the contract authority and the obligation limit at identical levels. Therefore, I suggest that we all remain flexible on this spending issue, and that as this bill goes forth we give consideration to reducing the contract authority level down to what we truly expect to spend.

Today, even before this bill ever becomes law, the Federal aid to the highway trust fund is estimated by the administration to have $25.6 billion in unobligated balances. This is in unobligated contract authority.

Let me repeat. Today, we have put on the books $25.6 billion in contracts that we have not fulfilled and are not likely to honor because we have been limited—or will be limited—by previous legislation to the level of these obligations.

Thus, I am convinced that as this bill proceeds we can find ways to reduce its costs and address the concerns raised by the President.

This is a very difficult and complicated legislative issue. I congratulate all the committees involved, especially the committee chairmen and ranking members and their staffs who have brought this legislation to the Senate for consideration. Indeed, it is because of all the complexities involved that they are to be truly congratulated for even getting this far.

In closing, just as an aside, let me conclude that one lesson that we might learn from these legislative exercises surrounding the highway bills over the last several weeks—indeed months—is as we look to the future, we may want to rethink the structure of our committees in this area. We may want to find ways that could streamline this overall legislative process to make funding more transparent and to improve the overall oversight of these various transportation programs.

I probably would find that restructuring of committees and how we consider major infrastructure legislation in the Congress even more difficult than just passing a highway bill. But I think we need to start thinking about this for the future.

Mr. INHOFE. Mr. President, we would like to at this point yield for a unanimous consent request of the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 2396 TO AMENDMENT NO. 2285

Mr. DEWINE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant journal clerk read as follows:

The Senator from Ohio [Mr. DEWINE] proposes an amendment numbered 2396 to amendment No. 2285.

Mr. DEWINE. 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 printed in today's RECORD under ''Text of Amendments.'')

Mr. DEWINE. Mr. President, I ask unanimous consent that amendment be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 2396) was agreed to.

AMENDMENT NO. 2308 TO AMENDMENT NO. 2285

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator CORZINE.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. CORZINE, proposes an amendment numbered 2308 to amendment No. 2285.

Mr. REID. 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 permit funds to be used for programs to impound the vehicles of drunk or impaired drivers)

On page 762, between lines 12 and 13 insert the following new paragraph:

''(6) The costs of operating programs that impound the vehicle of an individual arrested as an impaired operator of a motor vehicle for not less than 12 hours after the operator is arrested.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, without objection, the amendment is agreed to.

The amendment (No. 2308) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2312 TO AMENDMENT NO. 2285

Mr. REID. Mr. President, I call up amendment No. 2312.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. CORZINE, proposes an amendment numbered 2312 to amendment No. 2285.

Mr. REID. 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 require additional programs and activities to address distracted, inattentive, and fatigued drivers)

On page 724, strike line 19 and all that follows through page 725, line 2, and insert the following:

(A) by redesignating clause (6) as clause (8);

(B) by inserting after ''involving school buses,'' at the end of clause (5) the following: ''(6) to reduce aggressive driving and to educate drivers about defensive driving, (7) to reduce accidents resulting from fatigued and distracted drivers, including distractions arising from the use of electronic devices in vehicles,''; and

(C) by inserting ''aggressive driving, distracted driving,'' after ''school bus accidents,''.

On page 731, between lines 12 and 13, insert the following:

''(5) RESEARCH ON DISTRACTED, INATTENTIVE, AND FATIGUED DRIVERS.—In conducting research under subsection (a)(3), the Secretary shall carry out not less than 5 demonstration projects to evaluate new and innovative means of combatting traffic system problems caused by distracted, inattentive, or fatigued drivers. The demonstration projects shall be in addition to any other research carried out under this subsection.

On page 770, between lines 7 and 8, insert the following:

''(2) DATA ON USE OF ELECTRONIC DEVICES.—The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary in consultation with the States and with appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.

On page 770, line 8, strike ''(2)'' and insert ''(3)''.

On page 770, line 19, strike ''(3)'' and insert ''(4)''.

On page 770, line 23, strike ''(4)'' and insert ''(5)''.

Mr. REID. I ask the amendment be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 2312) was agreed to.

Mr. REID. 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.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 2498 AND 2532, AS MODIFIED, TO AMENDMENT NO. 2285

Mr. BOND. Mr. President, I have an amendment for Senator MURKOWSKI relating to Denali and a second-degree amendment of Senator SHELBY, No. 2532. I ask unanimous consent to call these up, as modified, and ask they be accepted. The modifications are on the amendments.

The PRESIDING OFFICER. Without objection, the amendments will be so modified and agreed to.

The amendments (Nos. 2498 and 2532), as modified, are as follows:

(Purpose: To establish the Denali Access System in the State of Alaska)

On page 39, between lines 22 and 23, insert the following:

GENERAL FUND AUTHORIZATION.—

(17) DENALI ACCESS SYSTEM.—For the Denali Access System under section 309 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note; Public Law 105–277), $30,000,000 for each of fiscal years 2004 through 2009.

AMENDMENT NO. 2532, AS MODIFIED

At the appropriate place, insert:

''SEC. . THE DELTA REGIONAL AUTHORITY.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1814(a)), is amended by adding at the end the following:

''178. Delta Region transportation development program

''(a) IN GENERAL.—The Secretary shall carry out a program to—

''(1) support and encourage multistate transportation planning and corridor development;

''(2) provide for transportation project development;

''(3) facilitate transportation decisionmaking; and

''(4) support transportation construction.

''(b) ELIGIBLE RECIPIENTS.—A State transportation department or metropolitan planning organization may receive and administer funds provided under the program.

''(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under the program for multistate highway and transit planning, development, and construction projects.

''(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by section 134 and 135.

''(e) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under the program based on—

''(1) whether the project is located—

''(A) in an area that is part of the Delta Regional Authority; and

''(B) on the Federal-aid system;

''(2) endorsement of the project by the State department of transportation; and

''(3) evidence of the ability to complete the project.

''(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

''(1) encourage State and local officials to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

''(2) give priority to projects that emphasize multimodal planning, including planning for operational improvements that—

''(A) increase the mobility of people and goods;

''(B) improve the safety of the transportation system with respect to catastrophic—

''(i) natural disasters; or

''(ii) disasters caused by human activity; and

''(C) contribute to the economic vitality of the area in which the project is being carried out.

''(g) FEDERAL SHARE.—Amounts provided by the Delta Regional Authority to carry out

a project under this section shall be applied to the non-Federal share required by section 120.

''(h) AVAILABILITY OF FUNDS.—Amounts made available to carry out this section shall remain available until expended.''.

''(b) CONFORMING AMENDMENT.—The analysis for chapter I of title 23, United States Code (as amended by section 1841 (b)), is amended by adding at the end the following:

''178. Delta Region transportation development program.''.

On page 678, after line 5, insert:

GENERAL FUND AUTHORIZATION.—

(16) DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM.—For planning and construction activities authorized under the Delta Regional Authority, $80,000,000 for each of fiscal years 2004 through 2009.

Ms. MURKOWSKI. Mr. President, one of the amendments I filed yesterday, along with Senator STEVENS, was in relation to what I am calling the Denali Transportation System. I am disappointed the full amendment will not be part of the bill, but I am grateful for the efforts Senator INHOFE and others who were able to accommodate even part of it.

As my colleagues know, the National Highway System we established in the 1950s not only brought benefits to individual States but to the country as a whole. It has more than lived up to its promise of greater access, an improved quality of life, and increased wealth for all Americans. Throughout the United States, a modern highway system connects virtually every single community in every single State—except one.

The majority of Alaskan communities remain unconnected. Alaska has been left far behind the rest of the Nation, with a road system that is no system at all. If the highway system is the Nation's skeleton, Alaska is still missing its arms and legs.

As a result, many Alaskan communities are punished with third-world conditions and an extraordinarily high cost of living, and the Nation as a whole is that much poorer because Alaska's tremendous natural wealth cannot be shared.

This is not the first time that Congress has dealt with a similar problem. When the Appalachia region needed extra assistance, Congress responded to the call by providing $450 million per year for the Appalachia commission to construct the Appalachia Transportation System. The bill before us proposes to increase that sum even further, to $590 million per year.

A 1998 Congressional Research Service report reads as follows:

In 1964, a Presidential commission on Appalachian region reported that ''geographic isolation'' was the very basis of its development lag. The commission argued that development ''could not proceed until its regional isolation was overcome by its penetration by an adequate transportation network.''

Further, they said, a system was needed ''to and from the rest of the nation and within the region itself.''

Their core argument: ''before development could take place in Appalachia, major investments had to be made in basic public facilities.'' This was coupled with a belief that the ''barrier-effect of Appalachia's mountain-chains was a major cause of underdevelopment'' and led to a proposal that a development highway system be built ''to break the isolation of Appalachia's economically depressed regions.''

Importantly they noted, ''that the routes not be chosen to ease congestion or upgrade heavily traveled areas but to stimulate traffic through remote areas that have a development potential.''

My amendment would allow the Denali Commission to begin doing for roadless areas of Alaska what Congress authorized for Appalachia. However, there are some critical differences. I want to emphasize that word ''roadless.''

In the Appalachia region, communities were isolated by poor roads. In Alaska, they are isolated by no roads. We are not asking for an entire network of major highways, only for the simple ability to move people and goods overland from one place to another. The dirt roads Appalachia started with would be regarded as a blessing in Alaska.

Second, we are proposing only to construct connections for communities that have no current access—no highway, no rural two-lane road, no dirt road, or improvements to the internal roads in these same isolated communities. The latter is critical for residents to get to their schools, to clean water sources, to clinics and stores and garbage dumps.

Third, and most important, we are not asking for similar funding. I understand the fiscal realities before us today. The amendment I filed asked for only $50 million per year for Alaska. As revised, it will provide $30 million.

The increase this bill contains for Appalachia is almost three times that sum. In all, the Appalachia system will receive almost 12 times what we are asking.

I do not object to spending money in Appalachia. I think that money has gone to good use. I simply believe we would get even greater value from a modest investment in the 49th State.

Alaska is rich in resources that can and should be a driving force for the Nation's economy, stimulating hundreds of thousands of jobs throughout the country. It is in an ideal location to be a crossroad for international trade, both by air and by sea, especially if you believe predictions that warming trends will open up a northern sea route to Europe in a few short years.

Yet we remain poor both in population and in highway miles. The formula funds we receive through the highway bill are not sufficient to allow the construction of new links between communities, no matter how badly they are needed.

I also understand some of my colleagues wish to create a new Appalachia-style system for the lower Mississippi area. I noted some pictures of a bridge were displayed on the floor yesterday, and it was suggested that that bridge was inadequate. At least the citizens of that area have bridges to complain about. My constituents do not.

It is important to make the point that this is not just about Alaska's needs. We all expect and demand certain basics for our constituents: clean water and food, warmth, shelter, schools and medical services.

In my State, because of the isolation of so many communities, all these services have to be duplicated over and over again, because the Native people of these isolated communities are eligible for and receive Federal assistance to ensure they have access to those services.

I have heard some of my colleagues suggest that Alaska demands a great deal. Let me suggest that we would be happy to demand less, if we were in less desperate need. No State—or its citizens—can prosper without adequate transportation systems. In much of the country, such systems have been in place since before the American Revolution, and have been constantly changing, adapting and being upgraded ever since. In much of Alaska, in contrast, residents are still forced to travel between communities by boat, or on frozen rivers, just as they did when the Territory of Alaska was first purchased from Imperial Russia. In this day and age, such a situation is completely unacceptable. It is a lasting mark of neglect, and it is past time to rectify it.

The Denali Transportation System will provide far greater benefits than costs. As we enter an era where gigantic natural changes are occurring in the Arctic environment, and ice-free maritime transportation through the Arctic Ocean is expected to become a reality within decades, it is critical that we begin to prepare ourselves for those changes. Adequate transportation connections to—and within—America's only Arctic State are imperative.

This is a time for foresight. The key to long-term prosperity is wise investment. Investing in Alaska is investing wisely for the future of the entire nation, just as investing in Appalachia was a wise choice. We have incomparable resources and vigorous citizens. It is time we have the transportation system that will allow those assets to be used as they should be.

Mr. BOND. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. INHOFE. Mr. President, I ask unanimous consent to vitiate the cloture motion on the bill and then ask the bill be read for a third time.

Mr. LAUTENBERG. I object.

Mr. INHOFE. I withdraw the previous unanimous consent request and now send the managers' amendment to the desk. We have no further debate on the managers' amendment.

The PRESIDING OFFICER. The managers' amendment is not yet pending.

AMENDMENT NO. 2616 TO AMENDMENT NO. 2285

The PRESIDING OFFICER. Is there objection to considering the managers' amendment?

The Chair hears none, and it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE], for himself and Mr. JEFFORDS, proposes an amendment numbered 2616 to amendment No. 2285.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

Is there further debate on the managers' amendment?

If not, the question is on agreeing to the managers' amendment.

The amendment (No. 2616) was agreed to.

AMENDMENT NO. 2285, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to the substitute, as amended.

The amendment (No. 2285), as amended, was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal 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, I now ask unanimous consent to vitiate cloture on the bill and then ask that the bill be read a third time and the Senate proceed to a vote on passage of the measure.

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

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. GRASSLEY. Mr. President, I would like to say a word about tax provisions being included in non-tax titles. The Finance Committee has sole jurisdiction over tax matters. The reasons for this are rooted in the U.S. Constitution. As a committee, it is imperative that we weigh in on all tax matters. This is particularly true with the provision included in the EPW Committee Substitute. We have heard from the Justice Department that this provision, as drafted, could jeopardize law enforcement efforts against organized crime and money laundering. The provision did not have the benefit of committee review or process. I appreciate the sponsor's interest in this issue. But I would remind Members that the chairman and ranking member take the responsibilities of the Finance Committee seriously. When we go to conference, I also want to ensure that regardless of the fact that the provision is included in the EPW title, the tax-writers are given responsibility to oversee the provision.

Mr. BAUCUS. I thank the Chairman for his comments, and I look forward to working with him to resolve this matter.

PRESERVING PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES

Mr. INHOFE. I would like to engage the Senator from Ohio, Mr. VOINOVICH, on the intent of his amendment regarding the preservation of parks, recreation areas, wildlife and waterfowl refuges, and historic sites. The amendment would require the Secretary, when making a finding of de minimis impact, to consider all ''avoidance, minimization, mitigation, and enhancement measures'' that have been incorporated into the project. Could you explain how this provision would be implemented?

Mr. VOINOVICH. This language serves an important function: it builds in an incentive for project sponsors to incorporate environmentally protective measures into a project from the beginning in order to support a finding of de minimis impact.

Obviously, there will be projects whose impacts will exceed the de minimis threshold even when mitigation measures are taken into account. For those projects the traditional Section 4(f) requirements will apply. But there also are many projects that could meet the de minimis impact standard if the project sponsor commits to take specific actions to reduce or offset the project's impacts on Section 4(f) resources. This amendment will make it possible for a finding of de minimis impact to be made in those situations.

REVENUE PROVISIONS

Mr. CONRAD. Mr. President, during the Finance Committee consideration of the tax title of this bill, there was significant debate on the provision in the bill that would shift a portion of corporate estimated tax payments from 2010 into 2009. This provision raises $11.4 billion in the year 2009, but loses $11.4 billion in the year 2010. The Chairman included this provision in his bill in response to concerns raised by me and the Chairman of the Budget Committee that the highway spending is not fully paid for over six years. I appreciate his sensitivity to my concerns. I believe that the spending in this bill, which occurs over six years, should be fully paid for over the same six year period. However, I do not believe that the shift in corporate estimated tax payments in the most appropriate way to achieve the goal of fully funding this bill over six years. The provision proposed by the Chairman shifts a hole in general revenues from one year into another.

In lieu of me offering an amendment during the Finance Committee mark up to replace the shift in corporate estimated tax payments with different revenue offsets, the Chairman and the Ranking Member of the Committee made a commitment to work with me to find new offsets before the highway bill is voted off the Senate floor. The second degree amendment that I have filed to the amendment by the Senator from Oklahoma, Mr. NICKLES, would have executed the commitment that was made to members of the Committee during the Finance mark up.

Mr. NICKLES. Mr. President, I appreciate the opportunity to work with my colleague on the Budget Committee, Senator CONRAD, and with the Chairman and Ranking Member of the Finance Committee on this matter. I share the concern of the Senator from North Dakota about using a timing shift in the corporate estimated tax payments as a way to pay for the spending in this bill. Although I realize that this payment shift has been used as an offset previously by the Finance Committee and this body, I do not support using the provision in the legislation before us today. I agree with my friend from North Dakota that real spending should be offset with real revenues. Senator CONRAD's second degree amendment to my amendment striking the shift in corporate estimated tax payments would replace the $11.4 billion that is shifted into 2009 with real revenue over the six year period of the bill.

Mr. CONRAD. My friend from Oklahoma is correct. My amendment would have replaced the provision shifting corporate estimated tax receipts with an extension of IRS and Customs User fees, and with several tax loophole closers that are included in S. 1637, the JOBS Act. These measures have already been reported by the Senate Finance Committee. I thank the Senator from Iowa for trying to include our amendments in his package of technical tax measures. Unfortunately, because certain provisions of my amendment are considered non-germane, we were unable to consider it on the floor today. I hope that the chairman and ranking member of the Committee will continue working with me as the legislative process moves forward to address my concerns.

Mr. NICKLES. I, too, am disappointed that we were unable to consider the amendment of the Senator from North Dakota. I look forward to working with him and the Chairman and Ranking Member of the Finance Committee to find a way to fulfill the commitment that was made during the Finance Committee mark up of the highway bill.

Mr. GRASSLEY. I support the amendments offered by my colleagues from North Dakota and Oklahoma. I

want to assure them that I fully intend to make good on the promise made in the Committee mark up. In a separate statement I made today, I laid out for the Senate the history of the use of the corporate shift. It has been used in varying forms on a number of tax bills that have been enacted. In making this agreement, I do not concede that it is an improper provision for the tax writing committees to use. As the legistlative process moves forward, I pledge that I will continue working to address their concerns.

Mr. BAUCUS. I concur with the statement of the Chairman of theh Finance Committee, and pledge to continue working to address the concerns of my colleagues from Oklahoma and North Dakota.

TRANSIT FUNDING FOR MICHIGAN

Ms. STABENOW. Mr. President, I rise to engage in a colloquy with the distinguished chairman and ranking member of the Banking Committee. The SAFETEA bill provides over $656 million in transit formula funding to the State of Michigan and while this represents a 53 percent increase over our funding under TEA–21, it still falls short of our transit needs. The Michigan Department of Transportation, MDOT, estimates that their routine Federal capital needs over the next 6 years just to maintain existing systems and services would exceed $1 billion. This comes at a time when Michigan's ridership continues to grow. Over the life of TEA–21, Michigan's transit ridership has grown from 81.6 million passengers in 1997 to over 89 million passengers in 2002—close to a 10 percent increase. The Senior Senator from Michigan and I have submitted a request on behalf of MDOT to help close this funding gap. The request would provide MDOT with $120 million in the 5309 Bus Discretionary account over the next 6 years. Would the chairman and ranking member work with us in conference to provide MDOT with this necessary funding to support Michigan's transit needs?

Mr. LEVIN. Mr. President, I join my colleague from Michigan in making this request. Michigan has tremendous transit needs. There are bus systems operating in every one of Michigan's 83 counties, from the urban Wayne County to rural counties in the Upper Peninsula. Despite covering all counties, service in many areas is minimal, creating a real hardship for working families who cannot afford to own a car. This shortfall exists despite the significant contribution by Michigan taxpayers. Michigan ranks sixth, behind five States with rail, in direct support for its public transit systems. Under TEA–21, Michigan ranked last in Federal transit funding among the Great Lakes States, and only received 43 cents back on every transit dollar it contributed to the highway trust fund. To help close this equity gap, I would also urge the chairman and ranking member to work with us in conference to provide these critical transit funds for Michigan.

Mr. SHELBY. Mr. President, I will work with my colleagues from Michigan to address this issue in conference and provide this critical funding for their transit systems.

Mr. SARBANES. I, too, will do everything I can to support funding in Michigan in conference.

Ms. STABENOW. We thank the chairman and ranking member.

GOLDEN GATE BRIDGE

Mrs. BOXER. Mr. President, I wanted to discuss the importance of the seismic retrofit project for the Golden Gate Bridge.

The Golden Gate Bridge is an internationally known landmark. The bridge was constructed with local funding and opened in 1937, serving as a critical link in California's highway system.

The Golden Gate Bridge now carries 40 million vehicles a year and is visited by more than 10 million people annually. However, retrofitting this bridge to withstand an earthquake with a magnitude of 8.3 is an expensive undertaking, with a total cost of $392 million.

The Golden Gate Bridge District paid for the first part of the retrofit—$71 million—with tolls. But, tolls will never raise enough money. Federal assistance is needed to protect this national treasure.

In TEA–21, I was able to obtain $50 million for the seismic retrofit of the Golden Gate Bridge. I would like to be able to provide funding for this project in SAFETEA.

Mr. REID. I agree with the Senator from California on the importance of the Golden Gate Bridge for the State's highway system. I support working with you during conference to ensure that the Golden Gate Bridge District can receive funding for seismic retrofit.

Mr. INHOFE. I also agree with my colleagues from California and Nevada that the Golden Gate Bridge is very important for the State. I also support working with the Senator from California in conference to provide funding for the Golden Gate Bridge District.

Mrs. BOXER. Thank you for your support.

SPIRIT HIGH PRIORITY CORRIDOR

Mr. BINGAMAN. Mr. President, I thank the chairman of the Environment and Public Works Committee for all of his fine work on this highway bill the Senate is now considering. I know he has had a very difficult task to balance the infrastructure needs of each state, and I appreciate the excellent job he and his staff have done.

If I could, I ask the chairman if he is familiar with the proposal to designate U.S. Highway 54 in the States of Texas, New Mexico, Oklahoma, and Kansas as the SPIRIT high priority corridor on the National Highway System?

Mr. INHOFE. Yes, I am familiar with the proposal and am pleased to be a sponsor of the bill of the senator from New Mexico to designate U.S. 54 as a high priority corridor.

Mr. BINGAMAN. I know the chairman is aware that community leaders in the four states have been working for 9 years to focus attention on the SPIRIT corridor because of the heavy truck traffic on the route and the important role that transportation plays in economic development. Is the chairman aware that Senators ROBERTS, DOMENICI, and I have offered an amendment to the highway bill to designate the SPIRIT corridor as a high priority corridor, but the managers of the bill have stated they prefer to consider it during the conference with the House?

Mr. INHOFE. Yes, the Senator is correct. I am aware of the amendment and will do my best to consider including the SPIRIT corridor designation in the conference report on the highway bill.

Mr. BINGAMAN. I thank the chairman for his consideration of my amendment in the conference.

PROTECTING HISTORY AND NATURAL BEAUTY

Mr. WARNER. Mr. President, I want to commend the Senator from Ohio, Mr. VOINOVICH, for his hard work, fairness, and responsiveness that he showed to me as he worked to resolve issues involving the preservation of parks, recreation areas, waterfowl and wildlife refuges, and historic sites.

In 1970, it was a privilege for me to serve as the chairman of America's Bicentennial Celebration. During that time I had an opportunity to visit many historic sites across this country. In Virginia we have a proud heritage that is enriched by the preservation of hundreds of historic properties. These sites have witnessed the shaping of our Nation. Today, they serve as our outdoor classrooms that bring alive the history of our democracy and our communities. They are living treasures of our past and are the foundations for our future.

For these reasons, I would like to enter into a colloquy with my colleague on the intent of his amendment. I understand that the amendment directs the Secretary of Transportation to issue regulations clarifying the factors to be considered and the standards to be applied in determining whether alternatives are ''prudent and feasible'' under section 138 of title 23 and section 303 of title 49. Would the amendment by my colleague that is included in the managers substitute alter or weaken the standards established in the Supreme Court's 1971 decision in the Overton Park case?

Mr. VOINOVICH. This amendment does not alter or weaken the Overton Park standards for determining what constitutes prudent and feasible alternatives. In authorizing this rulemaking, it is our clear intention that Overton Park will continue to serve as the lodestar—the fundamental legal standard—for defining and evaluating feasible and prudent alternatives. Under this standard, an alternative is considered ''not prudent'' if it would result in cost or community disruption of extraordinary magnitude, and is considered ''not feasible'' if it cannot

be constructed as a matter of sound engineering. This amendment would not change those long-standing definitions of ''prudence'' and ''feasibility.''

The basic problem we face today is the gradual accumulation of different interpretations of the Overton Park standards over the past 30 years. In particular, the lower Federal courts' interpretations of the Overton Park standards have resulted in considerable confusion and uncertainty about how to determine the ''prudence'' of alternatives. The net result is that Section 4(f) is sometimes viewed as an inflexible prohibition—an ''avoid at all costs'' requirement. That mistaken interpretation of Section 4(f) leads to many of the so-called horror stories that we hear so much about.

With this amendment, we are directing the Secretary of Transportation to issue regulations clarifying the application of the ''prudent and feasible'' test in a variety of circumstances. For example, it is only common sense to recognize that the ''prudence'' of an avoidance alternative depends in part on what you're avoiding, and how hard it is to avoid it. Are we dealing with a major part of great significance to the community—such as the famous Overton Park in Memphis, Tennessee? Or are we dealing with an easily replaceable ball field in an area where a replacement can be located without detriment to the interests of the affected users? Both of these parks receive a substantial degree of protection under Section 4(f). But what's prudent in one situation is different from what's prudent in the other, depending on a range of factors, including the degree of harm and the consequences to other resources from avoiding it. Those are the kinds of distinctions that need to be clarified in the regulations.

In short, the sole purpose of this amendment is to require the Secretary of Transportation to issue regulations that provide more detailed guidance on applying the Overton Park standards on a case-by-case basis. The result will be greater consistency in the application of the standard throughout the country.

Mr. INHOFE. I would also like to assure the Senator from Virginia that I concur with the explanation provided by the Senator from Ohio that it is our intent to retain the Overton Park standards as the fundamental legal standards to be applied in determining prudent and feasible alternatives.

Mr. JEFFORDS. I would concur with the comments of my colleagues and join Senator WARNER by reiterating the need to preserve our history.

In my state of Vermont, we have a wealth of history and natural beauty. To see the wildlife that populates the Missisquoi Wildlife Refuge or the covered bridges used by our forefathers is to experience a heritage that we all want preserved for future generations.

Section 4(f) has helped preserve these treasures. The Revolutionary War site at Fort Venegence on Route 7 in Pittsford, Vermont, was avoided as a result of 4(f).

An excellent collection of historic metal truss bridges across the Connecticut River was rehabilitated, not replaced, as a result of 4(f).

A road in the Danville Historic District was narrowed in order to keep the historic characteristics of the historic village because of 4(f).

Section 4(f) protections have served us well and will continue to safeguard our precious resources in the future.

Ms. MURKOWSKI. Mr. President, those of my colleagues who have Native American tribes located in their States will understand the importance of the Indian Reservation Road funding authorized as part of the our highway program. However, they may not be aware that the Indian reservation roads program does not treat all States equally. There are serious deficiencies in the inventory of road miles eligible for funding under the Indian Reservation Road—IRR—program.

Yesterday, I filed an amendment intended to address this issue. I understand the National Congress of American Indians and other groups favor action on this matter, and I would certainly be willing to entertain any suggestions for improving the current amendment. Unfortunately, it appears the present situation may make it impossible for the Senate to deal appropriately with this important matter.

In most areas of the country, the BIA had a reasonably complete inventory of roads and road needs by 1993, and these were incorporated into the IRR inventory. In Alaska that is not the case. The inventory numbers for Alaska are in no way complete, nor are they based on an actual count of road miles. They are based instead on a 1993 document that was never intended to serve as a complete inventory. The document was essentially a list of specific project requests known at that time. As a result, it omitted even core infrastructure in many villages, and completely overlooked approximately one-third of the villages in Alaska that should have been included.

Furthermore, BIA policy does not allow the situation to be corrected, as it arbitrarily limits increases in the inventory to 2 percent per year. While this may be appropriate in areas for which an accurate inventory was available in 1993, it is by no means equitable for Alaska's Native villages. In addition to missing entire Native communities, the BIA's inventory data has other flaws such as simply not having complete or current construction cost data for large parts of Alaska.

Let me add also that Alaska is not the only State where inventory deficiencies are a problem. Around the Nation, there are 93 to 99 tribes, depending on how you count, that have zero recorded inventory. By far the greatest numbers are in Alaska and California, but there are affected tribes in the East, the Midwest, the Southwest, the Pacific Northwest, and the Plains States—in short, throughout the country. If the Indian Reservation Roads program is to function the way it was intended to function, a new national inventory must be completed and it must be completed fairly. Congress must act to ensure that the absence of information on roads is not treated as the absence of need.

In recent years, our Native communities have themselves attempted to begin the planning and inventory process needed to develop a true inventory or a long-range transportation plan.

However, very little of this work product has actually been accepted by the BIA. Once inventory updates began to be submitted to BIA on a large scale, we found that the BIA was applying a ''2 percent'' limit to inventory increases. In Alaska we were limited to 365 miles in the 2001 update—2 percent accumulated from 1993—and since then, the limit has been about 45 miles per year. For a State with 229 tribes, a tragically deficient BIA inventory, and a transportation need that is second to none, the current policy is an absolute travesty of mismanagement.

Legislation would not be necessary if the BIA were willing to correct its own mistakes, but it has not done so. The inventory updating process has been a nightmare for Alaska Natives. BIA has changed the rules every year, has imposed requirements over and above what is contained in its own guidance manuals, and on occasion has changed the rules so close to the deadline for submittals that compliance is virtually impossible

In my opinion, the current formula and inventory system is based on an implicit BIA policy decision to focus future funds on the existing incomplete system, rather than on creating a system that serves all of the Nation's tribes equally. That is not BIA's decision to make, and it is not the process required by the law, but it is the apparent reality—and it badly needs to change.

Mr. President, among the amendments I filed for this bill is one to encourage additional motorcyclist training, which was cosponsored by Senators INHOFE, STEVENS, and CAMPBELL. This matter is in the jurisdiction of the Commerce Committee. It is deeply disappointing to think that the Senate may not act on it. Lives will be lost as a result.

My amendment has the full support of the American Motorcyclist Association, the Motorcycle Riders Foundation, the National Association of State Motorcycle Safety Administrators, regional and local riders groups throughout the country, and many others.

The single best way to prevent accidents is to provide better training.

A study of the California Motorcyclist Safety Program designed by Dr. John Billheimer and completed in 1996 found that rider training dramatically reduces accidents, and thus eliminates injuries and fatalities. Specifically, the study stated,

Analyses of statewide accident trends show that total motorcycle accidents have dropped 67 percent since the introduction of the California Motorcyclist Safety Program, with a drop of 88 percent among the under-18 riders.

Current statistics from the Commonwealth of Virginia are equally amazing. Virginia has approximately 110,000 registered motorcycles. Since 1998, there have been 7,099 motorcycle crashes in Virginia and 222 of those crashes have been fatal. Yet out of all those accidents, trained riders were involved in less than 4 percent of the total, and the number of fatal accidents involving trained riders is just 1.8 percent.

What this tells us is that the vast majority of motorcycle accidents involve riders who have not received proper training, and that when riders do receive training, the accident rate will drop dramatically.

My amendment is simply intended to encourage States to support motorcycle rider training and to adopt other important measures to save lives and prevent injuries. A State which demonstrates that it is making improvements in motorcycle safety would qualify for a grant of $100,000 per year, which is to be used to further improve and expand formal training for motorcyclists and for programs to improve driver awareness of motorcyclists.

Let me also stress that participation in this program is voluntary. No State is being forced to comply, and the amendment contains no sanctions for those which do not. This is strictly an incentive to do a better job at saving lives.

Why is this important? I have addressed this issue in detail in a previous statement, but let me recap some of the key points.

There are almost 5 million motorcycles operating on America's roadways, covering almost 17 million miles per year. Many more are used off-road, and some estimates put the actual number of riders at up to 20 million. The number of riders is steadily increasing every year, and as that number increases, so do accidents. At the same time, we are falling farther and farther behind in training people to ride safely.

The single best way to avoid injuries, fatalities, high insurance costs, lawsuits, medical costs and all the other factors that come into play is by avoiding the accidents in the first place.

The authors of the ''National Agenda for Motorcycle Safety'' agree. The ''National Agenda,'' published by the National Highway Traffic Safety Administration, was a cooperative effort of that agency, along with the Motorcycle Safety Foundation, the National Association of State Motorcycle Safety Administrators, and a host of others representing the insurance industry, law enforcement, riders, traffic safety experts and others.

The National Agenda identified a number of steps needed to reduce the tragic rate of motorcycle accidents. Rider education was one of its ''essential'' recommendations.

Unfortunately, there is currently no uniform process for providing such training. Although many, if not all, State provide at least moral support, most training is funded almost entirely by the students themselves, who pay up to $300 per person for the privilege. Many States also collect additional fees—often a nominal charge of $5.00 for a motorcycle operator's license—but it doesn't always go toward training programs.

That means there are more people who need and want training than there are programs to deliver it. Throughout the country, the waiting list for training class ranges from several weeks to several months.

In California, which has one of the oldest and strongest programs, it may take as long as 3 months. In Wisconsin, motorcyclist groups self-fund training classes, but the waiting list may be as large as 7,000 people. In Illinois, almost 11,000 people were trained last year, but nearly 4,000 were turned away for lack of space. That is happening in State after State.

The number of untrained riders is increasing, and we urgently need to reverse that trend. If you can pass your State's operator test, you can ride. And if you just spent thousands of dollars on a new motorcycle, the chances are you won't be letting that new motorcycle license go to waste. But passing a test doesn't make you a safe rider—that takes either years of experience—or it takes formal training.

The longer we ignore this issue, the more lives will be lost, the more injuries will be suffered, the more insurance rates for both drivers and riders will go up, and the more families will be harmed. This body should be acting, not avoiding.

Mr. JOHNSON. Mr. President, I want to take a few minutes to speak in support of the transportation bill now pending before the Senate and urge my colleagues to support final passage of the legislation.

This is an important bill that will create thousands of wellpaying jobs, make needed investments to the Nation's bridge, highway, and mass transit infrastructure while injecting billions of dollars a year into the economy and saving commuters millions of hours on the roads. The chairman and subcommittee chairman along with the ranking member and the senior Senator from Nevada have worked hard to craft a highway bill that balances the often conflicting needs of the States. Similarly, as a member of the Banking Committee, I want to recognize the bipartisan manner in which the chairman and ranking member worked with all colleagues to craft a transit package that meets the varying transit and bus service needs for our constituents.

In my remarks, I follow a host of other Senators who have come to the floor over the past week to highlight the importance of passing a robust transportation bill. In many respects, the matter we are debating has a more direct and daily impact on our constituents than just about any issue the Congress considers. Reducing accidents through increased road safety, replacing and refurbishing aging infrastructure, and moving people more efficiently and effectively go directly toward improving the quality of life throughout the Nation.

South Dakota is a large State and its citizens often time have to travel extraordinary distances to visit friends and family, receive medical care, or connect to major economic markets. With thousands of miles of roads, efficient, reliable, and dependable transportation is directly linked to the prosperity of rural America and our quality of life. The first emphasis of a transportation bill should be on a robust highway program. Without a comprehensive Interstate Highway System and secondary feeder roads it would be very difficult for the constituents of my state and those in other rural places to travel and earn a living. The bill before the Senate recognizes the national interest in transportation in and across rural America.

Passing a highway bill is also good for our economy. The jobs created through this legislation are permanent, high-paying jobs that will spur further economic development and put people to work in what has largely been a jobless economic recovery. According to the South Dakota Association of General Contractors, if the Congress passes this highway bill over 20,000 new jobs will be created in my State in the next 6 years. The importance of passing the bill goes beyond job creation. Good highways in rural areas also enable agricultural products and natural resources to get from source to market. The farm-to-market road system developed by the State depends upon a vast and reliable network of interstate highways, in good condition, to move products throughout the country and grow the economy.

As a member of the Senate Banking, Housing, and Urban Affairs Committee with jurisdiction over bus and transit programs, I believe that the transportation bill makes important investments in rural and urban transit. Transit and especially bus service; however, is an important link in rural America where social service providers, local governments, and state agencies struggle to provide reliable bus service. Federal aid to transit and buses is the crucial link ensuring that reliable and dependable service exists throughout many communities.

In meeting with transit providers across South Dakota, I fully understand the unique challenges toward providing reliable and dependable bus service over longer traveling distances. Although routes are more heavily used in urban areas, certain basic needs for public transit remain constant in urban and rural areas: there must be a driver, parts must be purchased, and

costly, but necessary, insurance obtained. The transit title considered by the Senate recognizes for the first time these unique challenges in constructing a financing mechanism that will grow rural transit and enhance service. Chairman SHELBY and Senator SARBANES deserve much of the credit for working with rural state Senators on the committee to incorporate this provision in the final bill.

It is vitally important that the Senate pass the transportation, transit and road safety bill pending before the Senate. As a member of the Senate Budget Committee, I am pleased that the committees constructing this bill did so within the budget framework this body adopted last year. The Senate-passed Fiscal Year 2004 Budget Resolution called for a six-year transit program totaling $56.5 billion. The Senate Finance and Banking Committees have worked diligently to construct a comprehensive and forward-looking bill that stays within the budget while addressing the Nation's critical infrastructure needs.

Mr. President, as the Senate considers legislation to reauthorize Federal transportation programs, I want to take a few minutes to address the transit programs authorized in the bill. As a member of the Senate Banking, Housing, and Urban Affairs Committee with jurisdiction over bus and transit programs, I believe that the transportation bill makes important investments in rural and urban transit. Chairman SHELBY and Senator SARBANES have performed an admirable job in constructing a transit title that enhances bus and transit service in large metropolitan areas, as well as rural States like mine.

South Dakota is a large State and its citizens oftentimes have to travel extraordinary distances to visit friends and family, receive medical care, or connect to major economic markets. With thousands of miles of roads, efficient, reliable, and dependable transportation is directly linked to the prosperity of rural America and our quality of life. The first emphasis of a transportation bill should be on a robust highway program. The bill before the Senate recognizes the national interest in transportation in and across rural America. Transit and especially bus service, however, is an important link in rural America where social service providers, local governments, and State agencies struggle to provide reliable bus service. Federal aid to transit and buses is the crucial link ensuring that reliable and dependable service exists throughout many communities.

In meeting with transit providers across South Dakota, I fully understand the unique challenges toward providing reliable and dependable bus service over longer traveling distances. Although routes are more heavily used in urban areas, certain basic needs for public transit remain constant in urban and rural areas: there must be a driver, parts must be purchased, and

costly, but necessary, insurance obtained. The transit title considered by the Senate recognizes for the first time these unique challenges in constructing a financing mechanism that will grow rural transit and enhance service. The transit title recognizes the special challenges facing low density states by creating a new rural density program for rural transit and elderly and disabled transit. By calculating the population density of a State along with the size of the State, the program ensures that rural States with demonstrated transit needs will receive a fair share of the billions of dollars in new transit spending over the next 6 years.

As a proponent of the new rural program it is necessary to recognize the indispensable role of Chairman SHELBY and Senator SARBANES toward ensuring that this program was included in the transit mark. Senators from both sides of the aisle worked in a constructive and bipartisan manner that produced a product that was unanimously supported by the Banking Committee. The consequences of our actions mean that transit providers in Pierre, Huron, Aberdeen, and other South Dakota communities will be able to expand service at a time when the demand for rural bus service is increasing. Connecting people in rural America to medical care, jobs, and family and friends is the legacy of this bill.

Therefore, it is vitally important that the Senate pass a transportation bill and incorporate the transit title into the broader transportation and road safety legislation pending before the Senate. As a member of the Senate Budget Committee, I am pleased that the various committees constructing this bill did so within the budget framework this body adopted last year. The Senate-passed Fiscal Year 2004 Budget Resolution called for a 6-year transit program totaling $56.5 billion. The Senate Finance and Banking Committees have worked diligently to construct a comprehensive and forward-looking bill that stays within the budget while addressing the crucial bus and transit infrastructure demands facing our country.

Mr. DURBIN. Mr. President, today the Senate will vote on the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, SAFETEA, S. 1072. I support this legislation. I believe it is a good first step toward funding our Nation's transportation infrastructure and creating jobs.

I would like to take this opportunity to discuss the benefits of this legislation for my home State of Illinois.

The Federal transportation bill, S. 1072, would make the largest investment to date in our Nation's aging infrastructure, $318 billion over the next 6 years. In short, this legislation would increase the State of Illinois's total Federal transportation dollars and provide greater flexibility. It would help improve the condition of Illinois's roads and bridges, improve funding for mass transit in Chicago and down State, reduce traffic congestion, and address highway safety and protection of our environment.

The bill would provide $255 billion over 6 years for highways and other surface transportation programs. Illinois has the third largest Interstate System in the country; however, its roads and bridges are rated among the worst in the Nation. The State can expect to receive more than $7.6 billion over 6 years from the highway formula contained in the Senate bill. That is a 37-percent increase or $2 billion more than the last transportation bill, TEA–21.

With these additional funds, the Illinois Department of Transportation will be able to move forward on major reconstruction and rehabilitation projects throughout the State.

Mass transit funding is vitally important to the Chicago metropolitan area as well as to many downstate communities. It helps alleviate traffic congestion, lessen air emissions, and provides access for thousands of Illinoisans every day. S. 1072 includes $56 billion over 6 years for mass transit. Illinois would receive about $2.9 billion over 6 years under the Senate bill, an increase of $500 million or 21 percent more than the last transportation bill.

This legislation also preserves some important environmental and enhancement programs, including the Congestion Mitigation and Air Quality, CMAQ, Program. CMAQ's goal is to help States meet their air quality conformity requirements as prescribed by the Clean Air Act. The Senate bill would increase funding for CMAQ from $8 billion to $13 billion—an increase of 62.5 percent. Illinois received more than $460 million in CMAQ funds in TEA–21; the State is expected to receive an increase in CMAQ funding under the Senate bill.

With regard to highway safety, Illinois is one of 20 States that has enacted a primary seatbelt law. S. 1072 would enable the State of Illinois and other States that have passed primary seatbelt laws to obtain Federal funds to implement this program and further improve highway safety.

I know this legislation is not a perfect document. Illinois's highway formula will be improved by this Senate bill, and I hope our House colleagues can add to our effort. Amtrak reauthorization and rail freight transportation funding are noticeably absent. And important road and transit projects from around my home State have not yet been included. I will work with my Illinois colleagues in the House to ensure that Illinois receives a fair share of transportation funds—highway, transit, and highway safety—in the final conference report.

With the passage of this legislation, the Senate has upheld its obligation to reauthorize and improve our Nation's important transportation programs.

I urge my colleagues in the House to move quickly to resolve their differences. This bill should have been

passed last year. Any further delay at this point could jeopardize construction and the jobs we so desperately need in Illinois.

Mr. DOMENICI. Mr. President, I want to begin by thanking the managers of the bill for their hard and tireless work on one of the most complicated pieces of legislation we will consider—second, perhaps, only to the Energy bill.

In this Senator's opinion, this bill, known as the Safe, Accountable, Flexible, and Efficient Transportation Equity Act, or SAFETEA, represents a tremendous step forward in the life of our country's transportation policy. While this is by no means a perfect bill and, quite frankly, I don't think such a thing exists, I believe this is a good bill. I am convinced that the Chairman and Ranking Member have put together a bill that treats our many States and varied interests as fairly as is possible.

With respect to my own State of New Mexico, this is a bill that will provide immeasurable economic benefit to our State. The most visible economic impact is on jobs. Thousands of New Mexicans will go to work as a direct result of this legislation. We have repeatedly been told that for every $1 billion spent on roads, more than 40,000 jobs are created. Over the 6-year span of this reauthorization, we will spend over $2 billion in the State of New Mexico. Quick math tells me that this will mean that over 80,000 jobs will be created in New Mexico alone in the next six years.

New Mexico is the fifth largest State geographically and has a predominantly rural population. This means that our population is very dependent on roads to keep us connected. Better roads will mean that people and goods will be able to move throughout our State in a safer, more efficient manner. Commerce will certainly benefit, bringing additional economic benefit to New Mexico.

Additionally, passage of SAFETEA will ensure that our State continues the improvements to our roads and rails begun under TEA–21. New Mexico roads will be safer for drivers, passengers, and pedestrians. Safer roads mean fewer accidents, fewer emergency road visits for victims of accidents, fewer lost days of work and productivity as a result of accidents. Aside from the much more important physical and emotional benefits, prevention of these accidents will bring on economic benefits as well.

While New Mexicans are primarily road-travelers, there is also a significant need for public transportation, both by bus and by rail. I am pleased with work done by the Banking Committee on the Transit portion of this transportation reauthorization bill. New Mexico will be a better place become of this portion of this bill.

Some of you know that I worked with the Native American leaders in New Mexico and throughout the country to create the Indian Reservation Roads program over 20 years ago. Each time we have reauthorized our transportation programs, I have worked to ensure that this program is taken care of. This year is no different. While the Environment and Public Works Committee was not able to accept all of my recommendations, or all of the Indian Affairs Committee's, I am pleased that the Chairmen and Ranking Members were willing to work with us to improve the program on the floor.

Now I know that the Statement of Administration Policy indicates that the President's advisors will recommend that he veto the bill if it remains at the current funding level. It is my great hope that we will be able to work with the White House and at the House of Representatives when this bill gets to Conference to find a way to provide adequate funding for our Nation's transportation needs. This country needs the certainty of a six-year reauthorization in order to plan for multi-year projects. I believe we are taking an imporant step toward providing that certainty today by sending this bill to a Conference Committee. I look forward to working with the Conferees to make this bill even better.

I yield the floor.

Mr. SARBANES. Mr. President, this reauthorization of the highway and transit program is one of the most important pieces of legislation that we will consider in this Congress. Its enactment will help restore the federal commitment to our surface transportation infrastructure—the lifeblood for our economy as well as our quality of life.

Ensuring that our Nation has a modern, safe and efficient transportation network has been one of my highest priorities in the United States Senate. As ranking Democrat on the Senate Banking, Housing and Urban Affairs Committee, which has jurisdiction over our nation's transit programs, and as a member of the Senate Budget Committee, I have fought vigorously to bolster federal investment in transportation infrastructure and to put in place a sensible, balanced framework in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA–21) to enable the nation to sustain its economic growth and enhance the quality of life of our citizens.

The reauthorization bill, known as the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, or SAFETEA, that is before the Senate authorizes $318 billion in funding over the next six years for maintaining and improving our Nation's and States' highways, bridges and transit systems and addressing safety issues.

There is a huge backlog of needed repairs, replacements and upgrades to bring our transportation network—our roads, bridges, transit systems and railroads—up to standards. The Department of Transportation's Conditions and Performance Report estimates that an average of $127 billion per year is needed over the next two decades to maintain and improve the condition of these systems. Other estimates show an even greater need. This backlog constrains our Nation's economic competitiveness, leaves more and more Americans stuck in traffic, contributes to air pollution and results in unnecessary fatalities. In my judgment, we must make prudent investments in our transportation systems not only to prevent further deterioration of the network—but to improve the system, relieve congestion and save lives.

These investments will also boost our economy and create jobs—at a time when new jobs and a boost to the economy are desperately needed. The United States Chamber of Commerce has estimated that each $1 billion invested in transportation infrastructure creates 47,000 direct jobs and there are indirect impacts as well. The Texas Transportation Institute has estimated that in 2001, Americans in 75 urban areas spent 3.6 billion hours stuck in traffic, with an estimated cost to the nation of $69.5 billion in lost time and wasted fuel. As these figures show, congestion has a real economic cost, in addition to the psychological and social costs of spending hours each day sitting in traffic. We cannot afford to let these costs of congestion grow any further. The investments made under this bill will help us make progress in our efforts to combat traffic congestion and deteriorating conditions on our Nation's roads, bridges, and transit systems.

For our Nation's roadways and bridges, this legislation authorizes an average increase of nearly 36 percent in funding to enable states and localities to make desperately needed repairs and improvements. Maryland's share of highway funding will grow by 40 percent over the next 6 years compared to the level provided in TEA–21—more than a $1 billion increase to help upgrade our highway infrastructure.

As a small ''bridge'' State with crisscrossing interstate routes, a State with high population density and with high traffic congestion, Maryland has tremendous highway infrastructure needs. Maryland is the fifth most densely populated State in the Nation. Maryland roads, including both State highways and other roads, now serve almost 54 billion vehicle miles of travel annually. Our State has the second largest urban interstate traffic density and the sixth largest percentage of roads in urban areas in the United States. As part of the northeast corridor Maryland experiences an extremely high volume of through traffic, especially on roadways such as I–95. Maryland is one of the few States in the Nation with two major metropolitan areas, Washington, D.C. and Baltimore, and two major beltways with some of the highest traffic volumes in the country—in excess of 150,000 average daily traffic—within 30 miles of each other. Our state has the

sixth highest congestion cost in the nation, and these congestion costs continue to rise. According to the Texas Transportation Institute, from 2000 to 2001, the annual cost in Washington, DC is up from $631 to $667/year. In the Baltimore Region, the annual cost went up from nearly $400/year to $455/year. In the Washington metropolitan area we have the second longest average commute time in the Nation.

In the next 20 years, Maryland's driving age population is expected to increase by nearly 20 percent, the number of licensed drivers by 25 percent, and the number of registered vehicles by 29 percent and this will mean significantly more traffic on our roads and pressures on our transit systems. Maryland's Department of Transportation is at a crossroads, facing deficient roads and bridges as well as key gaps and bottlenecks within the State's transportation system that are known to cause delay and congestion. Maryland has an estimated unfunded capital need for more than $13.2 billion in highway maintenance, construction and reconstruction over the next ten years. Clearly, Maryland must have adequate funding to address these transportation challenges and to facilitate overall mobility and the funds made available under this measure will be a significant help in this regard.

Importantly, the measure preserves the dedicated funding for the Congestion Mitigation and Air Quality, CMAQ, program which helps States and local governments improve air quality in non-attainment areas under the Clean Air Act; the Transportation Enhancement set-aside provisions which support bicycle and pedestrian facilities and other community based projects, as well as the other core TEA–21 programs—Interstate maintenance, National Highway System, Bridge and the Surface Transportation Program. Likewise, TEA–21's basic principles of flexibility, intermodalism, strategic infrastructure investment, and commitment to safety are retained.

I am especially pleased that the legislation includes a provision which sets aside 2 percent of a State's Surface Transportation Program for stormwater runoff mitigation. According to the Environmental Protection Agency, polluted stormwater from impervious surfaces such as roads is a leading cause of impairment for nearly 40 percent of U.S. waterways not meeting water quality standards. In the Chesapeake Bay region, it is estimated that runoff from highways contributes nearly 7 million pounds of nitrogen, 1 million pounds of phosphorous and 167,000 tons of sediment annually to the Bay. In Maryland alone, the Center for Watershed Protection estimates that the 7500 miles of Federal-aid highways generate yearly loads of 1.2 million pounds of nitrogen, 127,000 pounds of phosphorous and 25,000 pounds of sediment into Maryland waterways and eventually into Chesapeake Bay each year. The stormwater provision will provide more than $73 million for the Bay States and local governments for stormwater abatement of which $15 million would be available for Maryland.

For our Nation's transit systems, the legislation authorizes $56.5 million—$15.5 billion more than provided in TEA–21—to modernize and expand our transit facilities. These funds will go a long way to meeting the growing demand for transit in cities, towns, rural areas, and suburban jurisdictions across the country. Maryland's formula share of transit funding will grow by nearly 60 percent over the next 6 years from $572 million to $907 million. These funds are absolutely critical to Maryland's efforts to maintain and upgrade the Baltimore and Washington Metro systems, the MARC commuter rail system serving Baltimore, Washington, DC, Frederick and Brunswick, and the Baltimore Light Rail system. Bus systems and para-transit systems for elderly and disabled people throughout Maryland will also receive a big boost in funding.

I am particularly pleased that the legislation includes the Transit in Parks Act or TRIP which I introduced. This new Federal transit grant initiative will support the development of alternative transportation services—everything from rail or clean fuel bus projects to pedestrian and bike paths, or park waterway access, within or adjacent to national parks and other public lands. It will give our Federal land management agencies important new tools to improve both preservation and access. Just as we have found in metropolitan areas, transit is essential to moving large numbers of people in our national parks—quickly, efficiently, at low cost, and without adverse impact.

I especially thank the staff of the Banking Committee for the fine work done on the transit title of the bill. First, I commend Chairman SHELBY and his staff, including Sherry Little, Rich Steinmann, Peggy Kuhn, and of course, Doug Nappi and Kathy Casey. I also compliment my own staff, who did a superb job, providing needed additional resources to meet the transit needs of all Americans. My transit team was most ably led by Sarah Kline, and I also thank Aaron Klein, Charlie Stek, and Kate Mattice. Let me also acknowledge the major contribution made by the Subcommittee on Housing and Transportation and the staff of Subcommittee Chairman ALLARD, Tewana Wilkerson, and Ranking Member REED, Neil Campbell.

Like any other complex and comprehensive piece of legislation, this bill has its share of imperfections. But if we are to ensure not only the safe and efficient movement of people, goods and services, but also the future competitiveness and productivity of our economy, we must make these investments, and move forward with this legislation. I urge my colleagues to join me in approving this measure.

Mr. ALLEN. Mr. President, I rise today to offer my support to the amendment submitted by the distinguished Senator from Missouri, Mr. TALENT. I, like him, have been inundated with phone calls and letters by small business owners throughout the Commonwealth of Virginia expressing great concern with the moving provisions included in the Safety Title of the TEA–21 reauthorization legislation.

I believe the intentions for mandating these changes to current regulations governing the moving industry are well-intentioned. We have all heard horror stories about families having their belongings held hostage by a rogue moving company attempting to extort further revenues. This is a serious problem and the Federal Government needs to make sure regulations are in place to protect consumers and the vast majority of moving companies that act in good faith and provide a valuable service to millions of American families.

My constituents that move Virginia families from their old homes to their new ones have expressed their belief that these moving provisions go too far to try and reform an industry that is largely composed of law-abiding small businesses. By crafting broad language to target the small minority of ''bad actors'' in the moving industry, the Safety Title will unnecessarily and significantly burden those that follow existing regulations and go to great lengths to ensure consumers are satisfied with the outcome of their move.

We cannot ask small businesses, which often cannot absorb large additional costs in the services they provide, to have no recourse when a consumer inaccurately describes the services required. A small moving company cannot provide additional and often labor-intense services without appropriate recourse to collect for those services. By forcing movers to relinquish shipments for the initial price quoted provides no effective recourse to seek payment when other services are requested or required. This amendment would allow movers to collect any added expenses at the time of the delivery, or if there is disagreement about those charges, allow movers to recoup expensive attorneys' fees if it is determined that the mover was correct in assessing the additional charges.

Additionally, we should carefully consider the language we include with regard to providing States the authority to enforce Federal regulations. I understand that the moving industry is fully supportive of permitting State attorney generals to hold rogue movers accountable for consumer protection violations. However, it may be ill-advised to leave open the possibility that issues beyond consumer protection will be interpreted in varying ways by the States. If a moving company cannot be confident that there is a consistent application of these regulations, it will make it difficult for them to implement uniform practices.

As we consider the highway bill and continue to refer to it as a jobs measure, I believe we must make sure all provisions are appropriately measured and do not injure legitimate small businesses. Rogue movers are no more likely to adhere to the rules outlined in this legislation because they do not adhere to current statutes regarding the shipment of citizens belongings. I will state again, I believe the vast majority of U.S. movers abide by our laws and go to great lengths to ensure that they provide a quality service to consumers. The Safety Title legislation was crafted with a noble purpose, but I believe it would unduly hurt legitimate small businesses and I hope my colleagues will join me in supporting this amendment, which provides a more measured and even-handed response to a small, but high-profile problem of unscrupulous movers.

Mr. LAUTENBERG. Mr. President, we have been in a difficult parliamentary situation which has precluded my offering my amendment, but had I offered it, it would have accomplished the following.

My amendment would keep intact long standing provisions that protect public health, the environment, and the rights of citizens and states to have meaningful participation in transportation decisions.

While I know the authors have worked very hard to strike a balance on the provisions in this bill, I believe their language to ''streamline'' transportation planning processes is ill-advised and will have severe and unintended consequences.

No one can argue with the theory behind ''streamlining'' transportation projects.

No public official wants to slow and encumber its State's transit, highway, bridge, rail, or other major construction projects.

Unfortunately, the assumption behind the streamlining in this bill is that crucial tools to protect the environment, such as performing ''environmental impact statements,'' are the reason behind the long, protracted projects that go on for years. That is patently incorrect and this misconception must be put to rest.

In 2000, the Federal Highway Administration queried its divisions in all States, asking for a list of all projects requiring an ''Environmental Impact Statement'' that had been in preparation for over 5 years.

What they learned should inform this body as it seeks to address the problem of delay.

The Highway Administration found that a 70 percent—a large majority of the delays, were due to five issues—all unrelated to the environment.

They were: one, lack of funding; two, low project priority; three, local controversies; four, project complexity; and five, late changes made in the scope of a project.

If our purpose is really to bring greater efficiency to transportation planning, we must address the primary reasons for delay—those which are listed here.

The National Environmental Policy Act, NEPA—which this bill seeks to weaken—was signed by President Nixon for very good reasons. When citizens and all relevant agencies are given the opportunity for meaningful participation in project planning, any needed adjustments can be made early in the process, saving states time and money.

The approach outlined in this bill would essentially allow the U.S. Department of Transportation to waive the NEPA process if it so desired. That would be like a manufacturer that waits until its product is already designed before checking to see if it even serves the needs of consumers. Clearly, such an approach is clumsy, inefficient, and far more expensive in the long run if design changes are needed.

As written, the language in the substitute amendment is confusing and even contradictory.

It first states that despite NEPA or ''any other law'' that agencies are accountable for, the Department of Transportation is given the authority to make the final decision on the need for, and purpose of, a transportation project.

At the same time, the bill contains a standard ''savings clause'' which states that no other law—such as NEPA, the Clean Air Act, and the Clean Water Act—will be preempted by this very language.

This is inherently ambiguous and you can bet it will lead to more litigation. It will without doubt slow the progress on transportation projects—the very outcome this so-called ''streamlining'' language seeks to remedy.

Instead of just handing final decisionmaking authority over to the U.S. Department of Transportation, DOT my amendment outlines a simple, traditional process that will allow all relevant agencies to resolve conflicts which can arise. DOT has neither the expertise nor the statutory authority to make pivotal decisions on matters of public health and the environment.

Overarching decisionmaking authority should not be handed off to DOT.

This amendment restores the balance of authority that has historically existed across all relevant agencies and departments—both State and Federal—to facilitate thorough, responsible project planning.

My home State of New jersey perfectly illustrates the crucial role of our health and environmental agencies in making transportation planning decisions.

For years, New Jersey has implemented responsible, aggressive environmental law enforcement policies.

Yet because of up-wind pollution and large metropolitan areas, health standards for ozone are being violated in every county in New Jersey—which has some nine million residents.

According to New Jersey's department of environmental protection, 45 percent of our ozone pollution is caused by motor vehicle exhaust.

The group, Physicians for Social Responsibility, reports that nationwide about 15 million Americans suffer from asthma, which is triggered and exacerbated by ozone. In the last 20 years, the prevalence of asthma has risen over 60 percent.

An analysis performed a few years ago estimated that for just one pollutant, particulate matter, 2,300 to 5,400 people die prematurely every year in New Jersey. Mobile sources account for about 30 percent of the particulate matter emitted into the air. Nationally, some 20,000 American citizens die prematurely from this pollutant.

Think about that. America grieves for the 536 American soldiers we have lost in Iraq since March of last year, and rightly so. Yet in that same 1-year period 20,000 Americans died unnecessarily from just one air pollutant—particulate matter.

Consider toxic air pollutants. Seventeen of New Jersey's 21 counties rank among the 100 most polluted counties in the Nation and the risk of cancer in four of our counties is up to 3000 times higher than EPA's health threshold. A primary cause of these toxic emissions is mobile sources.

My point is that with such serious health threats related to transportation on the increase throughout the country, now is not the time to pare back the role of our public health and environmental protection agencies in decisionmaking on Transportation projects. The meaningful participation of these agencies is needed more today than ever before.

The U.S. Department of Transportation is simply not equipped or qualified to make the ultimate decisions with regard to public health and the environment. The stakes are too high.

I urge my colleagues to support public participation. I urge them to support agency cooperation that protects public health and the environment. And I urge them to support my amendment.

I yield the floor.

Mr. CORZINE. Mr. President, my distracted driving amendment addresses one of the most serious highway safety problems in our Nation: distracted and fatigued driving.

When drivers talk on their cell phones, change radio stations, eat, or otherwise fail to devote their full attention to driving, they pose a threat not only to themselves, but to others. Drivers who are drowsy or tired pose a similar threat.

I am particularly concerned about the use of hand-held cell phones while driving, which the California Highway Patrol recently reported was the number one cause of distracted driver accidents in their State. According to a study by the Harvard Center for Risk Analysis, ''the use of cell phones by drivers may result in approximately 2,600 deaths, 330,000 moderate to critical injuries and 1.5 million instances

of property damage in America per year.'' Other studies have reached similar conclusions. One, published in the New England Journal of Medicine in 1997, concluded that the ''use of cellular telephones in motor vehicles is associated with a quadrupling of the risks of a collision during the brief period of a call.'' That study went on to say ''this relative risk is similar to the hazard associated with driving with a blood alcohol level at the legal limit.''

States, counties and municipalities around the country have considered legislation affecting the use of handheld cell phones while driving. New York enacted a ban against the use of hand-held cell phones while driving in 2001. A number of municipalities in my own State of New Jersey have also chosen to enforce bans within their borders, including Marlboro, Carteret and Nutley. New Jersey itself has enacted a law that imposes additional penalties on those driving infractions where cellphone use has been determined to be a factor.

This patchwork of laws, however, does not take the place of a consistent, Nation-wide ban. That is why I introduced the Mobile Telephone Driving Safety Act last year. That bill would provide incentives for States to adopt bans on hand-held cell phones, and I hope that we can build more support for this legislation in the future. However, this amendment proposes a more modest first step that I have worked out with the managers of the bill from the Commerce Committee, Senators MCCAIN and HOLLINGS.

The main provision in the amendment would provide Federal funds for States to implement programs designed to address distracted and fatigued driving, by making such programs an eligible use of funds under the Section 402 highway safety program. These programs might include public education campaigns, additional training for law enforcement, and implementation of laws that specifically address fatigued or distracted driving.

The amendment also calls for several demonstration projects to specifically test ways of combating distracted driving. And it directs States to work with local law enforcement officials to find ways to collect more accurate data about how the use of electronic devices in vehicles affects traffic safety.

In sum, this amendment helps address some of the most important highway safety issues we confront. And it does so without requiring any new funds, or putting any additional burdens on the States. I want to thank Senators MCCAIN and HOLLINGS for their cooperation on this matter, and I urge my colleagues to support it.

Mr. BINGAMAN. Mr. President, I have submitted an amendment to continue an important Federal program begun in TEA–21 that addresses a unique problem with the roads in and around the Nation's single largest Indian reservation and the neighboring counties. Through this program, Navajo children who had been prevented from getting to school by frequently impassable roads are now traveling safely to and from their schools. Because of the unusual nature of this situation. I believe it must continue to be addressed at the Federal level.

The Navajo Nation is by far the Nation's largest Indian Reservation, covering 25,000 square miles. Portions of the Navajo Nation are in three States: Arizona, New Mexico, and Utah. No other reservation comes anywhere close to the size of Navajo. The State of West Virginia is about 24,000 square miles. In fact, 10 States are smaller in size than the Navajo reservation.

The counties in the three States that include the Navajo reservation must maintain the roads used by county school buses but receive no Federal or local tax funds to maintain the roads. Nearly all of the land area in these counties is under Federal or tribal jurisdiction. As I understand it, counties in States with large reservations are not required to maintain roads on the reservation. Of course, no other reservation is anywhere close to the size of the Navajo reservation.

According to the Bureau of Indian Affairs, about 9,800 miles of public roads serve the Navajo nation. Only about one-fifth of these roads are paved. The remaining 7,600 miles, 78 percent, are dirt roads. Every day school buses use nearly all of these roads to transport Navajo children to and from school.

In response to this unique situation, I authored a provision in TEA–21 to provide annual funding to the counties that contain the Navajo reservation to help ensure that children on the reservation can get to and from their public schools. Under section 1214(d) of TEA–21, $1.5 million is made available each year to be shared equally among the three states that contain the Navajo reservation. These Federal funds can be used only on roads that are located within or that lead to the reservation, that are on the State or county maintenance system, and that serve as school bus routes.

For the last 6 years, the counties have used the annual funding to help maintain the routes used by school buses to carry children to school buses to carry children to school and to Headstart programs. The amendment provides a simple 6-year reauthorization of that program, with a modest increase in the annual funding to allow for inflation and for additional roads to be maintained in each of the three States.

Continuing this program for 6 more years is fully justified because of the vast area of the Navajo reservation—by far the Nation's largest. I do believe the unique nature of this situation can only be dealt with effectively by the Federal Government. I am pleased to have my colleague, Senator DOMENICI, as a cosponsor, and I hope all Senators will support our amendment.

I ask unanimous consent that several letters supporting this amendment be printed in the RECORD.

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

SAN JUAN COUNTY COMMISSION,
Monticello, UT, January 6, 2003.

Re: Indian School Bus Route Safety Reauthorization Act of 2003

Hon. JEFF BINGAMAN,
U.S. Senator, Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: San Juan County, Utah wants to express our appreciation to you for your efforts to secure funding to improve the Indian School Bus Routes. San Juan County has approximately 25% of the total land area on the Utah portion of the Navajo Nation.

The County is currently maintaining 611 miles of roads on the Navajo Nation. 357 miles are natural surface, 164 miles are of a gravel surface and 90 miles are paved. Most of these roads are used by school bus in the transportation of students to and from the different schools.

The County has three high schools that are operated by the San Juan School District on the Utah portion of the Navajo Nation (Whitehorse High School in Montezuma Creek, Monument Valley High School in Monument Valley and Navajo Mountain High School in Navajo Mountain). In addition, the school district has two elementary schools located in Halchita, near Mexican Hat and in Montezuma Creek. The Bureau of Indian Affairs has two boarding schools that also operate within the County boundaries at Aneth and Navajo Mountain. In addition there are pre-schools that are located in Monument Valley, Halchita, Toda, and Montezuma Creek.

One major example of the funds that have been previously used was to pave the nearly six miles section of road in the Navajo Mountain area. Navajo Mountain is an isolated community located in the southwestern corner of San Juan County. There is a single highway in and out of the community, with the nearest community located over seventeen miles to the south in Arizona. The road still is dirt for ten miles south of the Utah boundary, but the County was able to pave the road on the Utah side this past year making the road passable year round and greatly improving the safety for the students and residents.

We would strongly encourage the re-authorization of these funds for this important need.

Very truly,

TY LEWIS,
Commissioner.
MANUEL MORGAN,
Commissioner.
LYNN H. STEVENS,
Commissioner.

BOARD OF SUPERVISORS
OF APACHE COUNTY,
St. Johns, AZ, March 1, 2000.

Hon. Senator JEFF BINGAMAN,
Hart Senate Office Building.
Washington, DC.

SENATOR BINGAMAN: I strongly express my appreciation for your effort for the passage of the Transportation Equity Act for the 21st Century (TEA–21). The TEA–21 funds were utilized to purchase some gravel for school bus routes within the Apache County, District II, on the Navajo reservation where it was badly needed.

Without your effort and other members of Congress, such road improvements would have never been possible on the Navajo reservation.

Please accept the enclosed information on the Apache County, District II plus the resolutions of the local Navajo community chapters as our thanks.

Again, thank you.

Sincerely,

TOM M. WHITE, Jr,
County Supervisor, Ganado District II.

Enclosure.

NAVAJO COUNTY BOARD OF SUPERVISORS,
Holbrook, AZ, December 18, 2002.

Senator JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

Re: TEA–21 Funding for Maintenance of School Bus Routes

DEAR SENATOR BINGAMAN: Navajo County has used the TEA–21 funding since its inception to maintain school bus routes located on reservation lands within the county. In order to best use these funds, we have entered into agreements with the Bureau of Indian Affairs and various established school districts. These agreements allow us to expand the budgets for roads in the school districts and receive maximum benefit for funds spent.

The funding to date has been spent as follows: Funding of road worker salaries, $63,226; purchase of road working equipment, $215,651; purchase of road building materials, $173,313.

This material, labor and equipment helps to maintain over 1,300 miles of school bus routes. Even though these funds are extremely helpful, the current amount of funding is inadequate to meet the needs that are encountered in these remote lands.

Navajo County fully supports your efforts to not only continue the present funding, but also the efforts to increase the annual amount. If this funding was not available, the school children on the reservation would be the ones who suffer.

Please continue your efforts to enhance the TEA–21 funds. If you need further information, please call me at (928) 524–4053.

Sincerely,

JESSE THOMPSON,
Supervisor.

OPERATIONS DEPARTMENT,
Kayenta, AZ, January 20, 2004.

Re: Letter of Support

Senator JEFF BINGAMAN,
Attn: Denial J. Alpert, Legislative Assistant,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: On behalf of the Kayenta Unified School District (KUSD) and Navajo County Board of Supervisors, I write in support of the TEA–21 grant that the federal government allocates to the State of Arizona and distributes to the Navajo County Board of Supervisors. The TEA–21 Grant greatly impacts the Kayenta Unified School District and the surrounding communities it serves on the Navajo Reservation.

For example, during the 2002–2003 school year, Kayenta Unified School District graduated 188 students from Monument Valley High School, and out of the 188 students, 120 students were bused to and form school daily and many of these students live off paved roads. The district buses travel over 350,000 mile on an off unpaved roads and transports 2,105 students a day. The overall enrollment at Kayenta Unified School District is 2,600 students.

The district is allocated $30,000.00 from the TEA–21 grant annually to support the salary of a heavy equipment operator. Currently, the district has 35 bus routes, and 25 of these routes are on unpaved roads. The heavy equipment operator grades all unpaved roads and with assistance from the TEA–21 grant, we are able to maintain these roads adequately. Most of all, the unpaved roads need to be safe for student transportation, and it is important that we maintain these bus routes, so KUSD is requesting that your office continues to financially support this funding for all Indian reservations, but more importantly, to ensure safe transportation for our students.

Furthermore the TEA–21 grant should be equally distributed among the three states that receive this grant. The purpose of the grant is to improve or maintain unpaved roads on the Indian Reservations, especially when inclement weather sets in. With many unpaved roads, the assistance from the TEA–21 grant has made it possible for our students who live in remote areas to continue to remain home and attend school. Otherwise these students would have to go to a boarding school and live away from home. Navajo families in our surrounding areas and Kayenta Unified School District greatly benefit from the TEA–21 grant.

Your continuous support and allocation in awarding Kayenta Unified School District is greatly appreciated.

If there are any questions please contact me at (928) 697–2130.

Sincerely,

JULIUS YOUNG II,
KUSD/Operations Director.

FORT DEFIANCE COMMUNITY CHAPTER,
Fort Defiance, AZ.

RESOLUTION OF THE FORT DEFIANCE CHAPTER EXPRESSING AN APPRECIATION TO SENATORS PETE DOMENICI AND JEFF BINGAMAN AND OTHER MEMBERS OF THE U.S. CONGRESS FOR THEIR EFFORTS AND SUPPORT OF FUNDS ALLOCATION TO APACHE COUNTY AND OTHER COUNTIES WITHIN THE NAVAJO NATION FOR ROAD MAINTENANCE

Whereas:

1. The Fort Defiance Community Chapter of Arizona is a certified Navajo chapter government pursuant to 26 N.N.C. is delegated governmental authority with respect to local matters consistent with Navajo laws, including custom, traditions and fiscal matter; and

2. The Fort Defiance Community Chapter population of 5,581 people have at least (800+) miles of excess dirt roads and the Apache County, District II maintains seven (7) miles of dirt road; and

3. The Fort Defiance Community Chapter realized that in the past, the Apache County was unable to defray the cost of gravel for the dirt roads; however, this past year, the Apache County was able to gravel two (2) miles of school bus routes in Fort Defiance area; and

4. The Fort Defiance Community Chapter knows that the Apache County, District II lobbied for its funds such as the TEA–21 (Transportation Equity Act for the 21st Century) and was funded to gravel some of the county routes which are bus routes; and

Now, Therefore, Be It Resolved That:

1. The Fort Defiance Chapter sincerely expresses an appreciation to Senators Pete Domenici and Jeff Bingaman and other members of the U.S. Congress for their efforts and support of funds allocation, especially the TEA–21 (Transportation Equity Act for the 21st Century) to Apache County and other counties within the Navajo Nation for road maintenance of school bus routes.

2. The Fort Defiance Chapter further supports that the gravel of dirt roads continue so that all motorists and school busses travel safely in all types of weather.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Fort Defiance Community Chapter at a duly called meeting at which a quorum was present and that same was Motioned by: Larry Anderson and Seconded by: Louva Dahozy, and passed by a vote of 26 in favor and 0 opposed and 1 abstained, this 28th day of February, 2000.

ALBERT DESCHINE,
President.
RENA C. WILLIAMS,
Vice President.
LAURITA BEGAY,
Secretary-Treasurer.
ELMER L. MILFORD,
Council Delegate.
HAROLD WAUNEKA,
Council Delegate.
RODGER DAHOZY,
Grazing Officer.

SAN JUAN COUNTY,
Aztec, NM, January 9, 2003.

Senator JEFF BINGAMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

HON. SENATOR BINGAMAN: We are aware that Congress will be considering bills to reauthorize the TEA–21 funding for local roads that provide access to the Navajo Reservation. These funds are of special significance to San Juan County.

The Public Works Department of San Juan County regularly maintains over 400 miles of roads that are adjacent to or provide access to the Navajo Reservation. These roads are critical to the population in the service areas. School buses depend on our County workers to keep the roads maintained and to provide other essential services.

Over the past five years, we have received $953,688 from the TEA–21 program for the maintenance of roads and bridges in these areas. The assistance received under this program will be crucial if we wish to continue to provide these much needed services to the residents on the Navajo Reservation and their visitors.

I would like to thank you for your hard work on behalf of the citizens on San Juan County and urge you to support legislation that would extend the TEA–21 Program.

Sincerely,

TONY ATKINSON,
County Manager.

GALLUP-MCKINLEY COUNTY PUBLIC SCHOOLS,
Gallup, NM, December 19, 2002.

Hon. Senator JEFF BINGAMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: Regarding the reauthorization of TEA–21 legislation, I would like to be up front in support of this bill. Our Gallup-McKinley County School District cannot function without a decent roads maintenance program. Our school district has established a good partnership with the McKinley County Commissioners' Office. Mr. Irvin Harrison, McKinley County Manager, is very instrumental in addressing the many roads maintenance issues. Of course, the money to do the actual maintenance work comes from the Indian School Bus Route Safety Reauthorization Act.

Let me explain why the Gallup-McKinley County Schools consider TEA–21 is practically indispensable. Our district daily transports 9,089 students and covers 16,070 miles. The 9,089 students are almost all Native Americans residing on Indian reservation land or checker Board Areas. The majority of the roads are dirt or unimproved. Our bus fleet totals 146 and 27 buses are equipped with lifts. Senator, you can imagine how delicate it is to make sure the roads are safe and all-weather condition. On an annual basis, our miles driven exceed 3,047,269. Without the county's roads maintenance program, our buses would deteriorate as quickly as we buy them and absenteeism would climb astronomically. What is so

unique about our district is, its 5000 square miles size and reported unpaved road transportation nears 400,000 miles. What the McKinley County Roads Department maintains include grading, placing gravel with some degree of compaction, repair work on drainage appurtenances and providing drainage solutions to rain damaged areas. Gallup-McKinley County School District is still expanding. A new high school is under design in Pueblo Pintado. A safe bridge is absolutely essential right next to the new school site.

Senator, I recall 3 years ago that you took a ride in one of our buses west of Gallup. I understand you enjoyed the rough ride. I thank you for taking the time from your busy schedule to visit our school district.

I am confident that the reauthorization of TEA–21 will be an historic event because this piece of legislation indeed relates to the No Child Left Behind initiative. All weather and safe roads provide the means to get the children to school on time. Absentees and tardiness are discouraged with a reliable transportation to school. I urge your colleagues to jump on the bandwagon and support the Indian School Bus Route Safety Reauthorization Act of 2003. Please call me if you have any questions.

Sincerely,

KAREN S. WHITE,
Acting Superintendent.

GALLUP MCKINLEY COUNTY
PUBLIC SCHOOLS,
Gallup, NM.

Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR HON. JEFF BINGAMAN: The Gallup McKinley County Schools serve over 15 thousands students, of which over 10 thousand are bussed daily. Our District's school buses travel 9,250 miles daily, one way. Several miles of these roads are primitive dirt roads with poor or no drainage. Several do not have guard rails and some are not maintained by any entity. The inability to safely negotiate school buses over these roads during wet, muddy and snowy conditions greatly restricts our ability to provide adequate services for families living along these particular roadways. Funding for school bus route road maintenance is vital to providing safe and efficient transportation for thousands of students throughout our County.

The School bus route maintenance programs have helped tremendously. Our County Roads Division (McKinley County) has been extremely helpful in maintaining hundreds of miles of bus route roads. The route improvements completed recently in the North Coyote Canyon, Mexican Springs, Johnson loop, Tohlakai, CR–1, Crestview, Lyanbito and Bluewell have provided us with the ability to safely negotiate these areas and transport hundreds of students to various schools.

The School bus route program is a very important program. Our County Roads division worked diligently to provide safe access and passage for our school districts 160 school buses. Without the school bus route program, it would be impossible to maintain safe conditions on these roads. To insure the safety of our school children and families, it is imperative that the reauthorization of the TEA–21 Bill be realized.

Your help in sponsoring bills, which address the unique situations with respect to school bus route roads, have been greatly appreciated. Your continuing support of the school bus route program (TEA–21 Bill) will enable us to continue to safely and efficiently transport our students. It is through these cooperative efforts that we are able to serve the hundreds of families living in our County. Thank you for your continued efforts.

Sincerely,

BEN CHAVEZ,
Support Services Director.

THE NAVAJO NATION,
ROCK SPRINGS CHAPTER,
Yah-Ta-Hey, NM.

RESOLUTION OF ROCK SPRINGS CHAPTER,
EASTERN NAVAJO AGENCY—DISTRICT 16

Requesting and Recommending to the United States Senators, Honorable Jeff Bingaman and Honorable Pete Dominci to Reauthorize the TEA–21 Bill for Continued Funding to the County of McKinley, State of New Mexico for Improvement of School Bus Routes Leading to and within the Navajo Indian Reservation which is Supported by Rock Springs Chapter Community.

Whereas:

1. The Rock Springs Chapter is a certified chapter and recognized by the Navajo Nation Council, pursuant to CAP–34–98, the Navajo Nation Council adopted the Navajo Local governance act (LGA) which directs local chapters to promote all matters that affect the local community members and to make appropriate decisions, recommendation and advocate on their behalf, and;

2. The Rock Springs Chapter is requesting and recommending to the United States Senators, Honorable Jeff Bingaman and Honorable Pete Dominci to Re-authorize the TEA–21 Bill for Continued funding to the County of McKinley, State of New Mexico for improvement of school bus routes leading to and within the Navajo Indian Reservation which is supported by Rock Springs Chapter Community, and;

3. The Rock Springs Chapter is established to plan, promote, and coordinate the community, economic, and social development for the community, including an oversight of coordinator and support for federal, state, tribal, and other programs and entities; and

4. The Rock Springs Chapter Community are highly concerned of their students attendance due to poor road conditions, lack of improving and maintaining bus routes and how it effects the daily transports of students as well as daily travel for community members, and:

5. There are vest miles of (dirt roads) school bus routes that still require improvement. Poor roads contribute to poor education, health issues, economic growth, unemployment, and fatalities in our rural (community) county.

Now, Therefore Be It Resolved:

1. The Rock Springs Chapter strongly supports the foregoing resolution to the United States Senators, Honorable Jeff Bingaman and Honorable Pete Dominici to Re-authorize TEA–21 Bill for Continued funding to the County of McKinley, State of New Mexico for improvement of school bus routes leading to and within the Navajo Indian Reservation.

2. The Rock Springs Chapter Community hereby supports the continuation of improving and upgrading the vast miles of dirt roads school bus routes.

CERTIFICATION

We, hereby certify that the foregoing resolution was duly presented and considered by the Rock Springs Chapter at duly called chapter meeting at Rock Springs Chapter, New Mexico (Navajo Nation) at which a quorum was present and the same was passed with a vote of 33 in favor, 00 opposed and 00 abstained on this 18th of February, 2003.

Motion: Ted Billy.

Second: Rose Mark.

RAYMOND EMERSON,
Chapter President.
HARRIETT K. BECENTI,
Council Delegate.
LUCINDA ROANHORSE,
Acting Community Services Coordinator.

Mr. CORZINE. Mr. President, I have submitted an amendment which addresses the serious national problem of drunk driving by helping to ensure that when drunken drivers are arrested, they can't simply get back into their car and put the lives of others in jeopardy. The amendment is based on legislation known as ''John's Law'' that I have introduced in the Senate and that has already been enacted at the State level in New Jersey.

On July 22, 2000, Navy Ensign John Elliott was driving home from the United States Naval Academy in Annapolis for his mother's birthday when his car was struck by another car. Both Ensign Elliott and the driver of that car were killed. The driver of the car that caused the collision had a blood alcohol level that exceeded twice the legal limit.

What makes this tragedy especially distressing is that this same driver had been arrested and charged with driving under the influence of alcohol, DUI, just 3 hours before the crash. After being processed for that offense, he had been released into the custody of a friend who drove him back to his car and allowed him to get behind the wheel, with tragic results.

We need to ensure that drunken drivers do not get back behind the wheel before they sober up. With this amendment, States would be allowed to use some of their drunk driver prevention grant money from the Federal Government to impound the vehicles of drunk drivers for no less than 12 hours. This would help ensure that a drunk driver cannot get back behind the wheel until he is sober. And that would make our roads safer, and prevent the loss of many innocent lives.

I hope my colleagues will support this commonsense measure. And I want to express my appreciation to Senators MCCAIN and HOLLINGS for their cooperation on this matter.

Mr. KOHL. Mr. President, I would like to take this opportunity to explain my objections to the transportation reauthorization bill. I want to make it clear to everyone in this chamber, and more importantly, to the people of Wisconsin, the reasoning behind my vote today. This legislation is important to me; I wholly support a 6-year transportation reauthorization bill. I understand the need, on so many levels, for long term transportation funding. This is especially true in Wisconsin, where the harsh winters make transportation planning critical. And across the Nation, I know that investment in our transportation infrastructure is vital to our safety and our economy. I know how a 6-year bill affects planning for cities and States, affects jobs across the country, and the overall impact that a 6-year authorization has on the economy. I have heard the statistics, read the data and seen the charts. But

most importantly, I know that if I were to support this bill today, I would not be doing my best to represent the people of Wisconsin.

Every time Congress has faced reauthorizing a transportation funding bill, I have had to fight for Wisconsin's fair share. And under TEA–21, Wisconsin received the best possible return over the course of the bill. Under TEA–21, Wisconsin received an average rate of return of approximately $1.02 to every dollar the State contributed to the highway trust fund. This fair return did not come without a fight, however, and prior to TEA–21's passage, I worked diligently to ensure that Wisconsin saw its fair share of transportation dollars.

This bill, however, throws those hard-won and well-earned returns away. By the second year of the bill, Wisconsin's rate of return will drop from almost $1.03 to $.95. According to preliminary estimates from my State's Department of Transportation, Wisconsin stands to lose an average of $80 million every year for the 6-year life of the bill under a 95 percent rate of return. In other words, the difference between a hundred percent and 95 percent rate of return results in millions of dollars lost for Wisconsin. How can I support that?

That is why I sought to offer an amendment, which would have helped Wisconsin recoup some of the loss under this bill. My amendment would correct one of the largest problems that midwestern States have faced over the past several years. Midwestern States account for almost 70 percent of the loss of funds that is associated with the ethanol tax exemption. Wisconsin's loss has more than tripled within the last 3 years alone. My amendment would change States' TEA–21 average by adding the ethanol losses that occurred between 1996 and 2001. By applying the revised averages to the portion of the bill that calculates the minimum a State can receive, Wisconsin would stand to gain in the range of $50 million every year of the bill. This would help the State gain back the losses that we faced due to ethanol.

Unfortunately, because of the rush of leadership on both sides of the aisle to finish the transportation bill, efforts to offer amendments improving the bill were procedurally blocked. I am very disappointed that so many of my colleagues—so many whose States do well under this bill—have shut out the rest of us who want to debate our ideas for making the bill fairer and better. This is politics at its worst. And the result will be a huge amount of public resources divvied up by a formula crafted in secret, unimproved with the ideas from—unresponsive to the needs of—too many States like Wisconsin.

Fortunately for Wisconsin and these other States, this bill is far from law despite our work this week. The White House is insisting on bringing the cost of the bill down by billions before the President will sign it. The House is developing a bill including an increase in the gas tax that has little support in the Senate. If a 6-year authorization does become law this year, it will not look anything like the behemoth we have voted on today.

And for all these reasons, I could not vote for this legislation—vote to pass the losses contained in this legislation to my State. I will not be part of a process that puts the Senate stamp of approval on an embarrassing backroom deal that has a lot more to do with log rolling than road building. I will not push through legislation that does not give Wisconsin drivers and Wisconsin taxpayers their fair share.

A safe and secure transportation network is important to the people in my State. The Wisconsin highway system requires constant attention and repair, to offset the damage caused by harsh winters and hot summers. Every year during the appropriations process, I have worked to secure funding for ongoing projects critical to ensuring safe roads and a stable economy. I support the Senate's decision to pass a 6-year authorization. But not this bill. I cannot in good conscience support this bill, which represents an embarrassment to the Senate and a serious loss to my State.

Mr. BURNS. Mr. President, I thank the managers of this difficult bill for the hours and days of work that have gone into this bill. This legislation is the most difficult the Senate will deal with this year. It goes without saying that there are more moving parts of this bill and that's what makes it so difficult. It affects every State in the Union in important ways: infrastructure and jobs. Every Senator in this body knows and understands that. All of us here are in need of both and it affects rural and urban areas alike.

If I have learned anything during my tenure here, it is this: It is impossible to out build America's love for the automobile.

The Subcommittee on Communications of the Commerce Committee has looked at this along with the Subcommittee on Surface Transportation. We have spent hours discussing safety and efficiency. We have passed legislation in telecommunications making it easier to telecommute. The deployment of broadband Internet services is lagging due to several reasons, but it becomes vital to the easing of congestion found in our morning and evening commutes—labor and consulting laws to deal with the one who stays home two of the five working days and uses either the telephone or Internet to correspond and perform his or her office responsibilities. It is being done in Washington, D.C. as we speak.

Great strides have been made in telemedicine and distance learning using these new and exciting communications tools. What I am trying to say is simple. It is not just a highway bill to move people but to move people and commerce. It is just one more item that is the infrastructure to do many things. The Internet has allowed Montana to move closer to downtown Minneapolis-St. Paul, Chicago, Seattle, Denver, or San Francisco. For that matter, it has opened up the world and world markets to us in rural areas as never before.

Now why do you ask why Montana has a huge interest in our roads and highways? We still depend on our farm-to-market roads. We are at the end of the line for product and the head of the line for the natural resources that are in high demand in every corner of the Nation.

Here is the problem. It is a problem that has been dealt with by so many Senators and Congressmen in a fair way. Montana has only 28 people per lane mile on our Federal aid highways when the national average is 124. That is on Federal aid highways. In another area, our per capita income is below the national average. If that is not enough, rural Montana has long stretches, fewer people with smaller incomes. In fact, you have heard me use this expression a lot: ''We have a lot of dirt between light bulbs.'' We also have ways of financing the modern day needs for modern day roads. We have huge holdings of federally owned lands—federally owned national parks, national forest lands, Indian reservations, and public lands. They all have transportation needs that are unique to their areas. That limits our tax base, thus the need for some assistance in fulfilling the transportation needs for the entire country.

Overall, I am very supportive of the bill before us today, but I do have some concerns and issues I wish we had more time to deal with.

As the bill is written now, Montana would not receive funds under the impaired driving or occupant protection sections of this bill. I have two amendments that create a minimum guarantee to States such as mine that desperately need assistance is these areas. If it is a national program, then everyone should be able to access those funds. I understand the incentive-based approach my colleagues have written but creating programs that exclude some States is not the right direction.

Senator SHELBY did a great job, and I thank him for his work and assistance on rural transit. Even though Montana receives a 169 percent increase from TEA-21, it translates into modest dollars. Now here is my problem. We have an aging rural population. I have 14 counties that do not have a local physician. So routes taken in Montana must traverse these areas where we have modest ridership and long travel distances. These new transit funds will help us meet those needs.

While we are on the subject of mass transit, it is time to face the situation of Amtrak.

Let me state at this point that I have been and continue to be a supporter of Amtrak. With all its problems, all the bumps, scars, and warts, Congress has listened to our folks at home, and it is clear they want a national passenger

system. It is costly. There are all kinds of studies and reports that one can draw from to deal with Amtrak, and I have yet to see any change in how it does business. We demagog the issue a lot and sometimes we see some attempt to change it but nothing that would change it drastically. We all demagog well, but we have shown no political will to change it. Regional needs and issues come front and center when we try.

There are those who think of Amtrak as a light rail commuter system, so the interest and money flows in that direction. It is the only national passenger railway system this country has. Let me repeat—it is the only national passenger system we have. If it takes money from the Federal Treasury to subsidize, then so be it. But if there are areas where it is being used as a local commuter service, then are the taxpayers of the Nation subsidizing a local problem?

Amtrak is just one of many important rail issues we should discuss today. When looking at rail policy, I believe it is important to consider the outlook of the rail customers along side that of the railroads, and those views are quite different.

In my State and many others across the Nation, we have the issue of captive shippers, and the economic impact to our States is no small item.

We have heard from more and more shippers about decreased transportation competitiveness and, as a result, increased transportation rates.

Let me give a quick description of what has happened in this country the last 20 or so years. In 1980, there were 40 class I railroads in this country. As a result, Congress passed the Staggers Act that year with the intent that regulation would be eased and competition would endure and drive the marketplace ensuring rail rates would remain reasonable. Through regulatory involvement and a stifling amount of consolidation, we find ourselves with essentially four class I railroads today, two in the east and two in the west.

Together with Senators DORGAN and ROCKEFELLER, I introduced S. 919, the Railroad Competition Act of 2003 which is represented in several amendments before us today. Our intent is to correct the model and the economic structure that allows monopolistic behavior in the freight rail industry. Contrary to what you have heard from the railroads, there are no provisions in our amendments that are re-regulatory. The bill restates the original intent of the Staggers Act of 1980 which has been eroded by mergers and regulatory interpretation.

Our amendments will not penalize the railroads or create an environment where railroads cannot compete with other transportation modes. In fact, our amendments will create competition among our railroads improving transportation efficiencies in our economy. I am the last Member of Congress who would introduce a measure that would drive a railroad out of a local economy, simply due to the fact that my State of Montana is nearly entirely captive to one railroad.

The bottom line is the railroad industry in this country is allowed to legally operate in a business model that breeds monopolistic behavior.

Montana is a classic case of what happens to rail customers when you eliminate competitive transportation alternatives. Our rail rates are some the highest in the Nation and my shippers end up subsidizing rail rates in regions where competition is present. Our rail customers pay more for less service. The rail customers in regions with competitive alternative pay less and receive more service.

American agricultural shippers are the most vulnerable to predatory marketing by monopolistic practices of railroads. The farm producer, unlike every other industry in America, cannot pass the freight costs onto anyone else. They must simply eat the cost.

It has been 24 years since the enactment of the Stagger Act, and neither the marketplace nor the Surface Transportation Board has corrected the obvious monopolistic behavior of our railroads. I ask that my colleagues seriously consider the rail customer issues we have in this country.

Finally, I appreciate the hard work of the managers of this bill and their consideration for rural America. It is my hope we begin to move forward on the highway bill and I look forward to its timely passage.

Mrs. FEINSTEIN. Mr. President, I take a few minutes today to talk about the transportation reauthorization bill before the Senate and why it is so important that we deliver a strong, well-rounded bill to our States.

This bill authorizes the largest increase of funds for California over 6 years since I have been in the Senate. That increase is $6 billion for California roads over the next 6 years.

As a donor State, California sends more tax dollars to Washington, DC, than we receive back. This bill over the next 6 years would greatly improve that status.

For the first time, this bill brings California, and all donor States, to a 95 percent rate of return. California is currently at a 90 percent rate of return. In other words, for every dollar California sends to Washington, it gets back only 90 cents for maintenance and improvement of our highways. This bill would allow California to receive 95 cents back on the dollar in the sixth year of the authorization of the transportation bill.

While that increase does not happen as quickly as I would like, this bill provides California with an overall $6 billion increase for important highway programs.

As a Californian, transportation is the backbone of our economy. California has two of the Nation's busiest ports—Los Angeles/Long Beach and Oakland, and California ports handle half of all cargo coming into the United States.

We need roads that are equipped to handle the flow of goods and the truck traffic that comes with it.

Mr. President, three-quarters of all goods shipped from California ports are now transported by truck along California roads. Roads that are in desperate need of repair. Thirty-seven percent of California road conditions are rated ''poor.'' Only 11 percent of roads nationwide have that same rating. On the other hand, only 13 percent of roads in California have a ''good'' rating while 46 percent of roads nationwide have the same classification.

At the same time, travel on California roads increased 97 percent between 1980 and 2000, while population increased 42 percent in the same period.

We are all familiar with pictures of California gridlock. Cars sitting on our freeways, moving at a snail's pace.

The facts bear out the images. Los Angeles has had the worst traffic in the nation for 16 years in a row. San Francisco and Oakland are tied with Atlanta and Washington for second place. San Diego ranked sixth.

Traffic congestion in California costs motorists $20.4 billion annually in lost time and fuel.

All this in a State that has six nonattainment air quality areas, with 70 percent of the State in the reformulated gasoline program because our air is so dirty.

California needs an infusion of cash to pay for highway enhancements to allow an easier flow of traffic to reduce the amount of time trucks and cars are idling, increasing air pollution. That is just one step we can take to allow communities in my State to reach air quality attainment.

We also need money for public transit to reduce the amount of cars on the road, reducing air pollution, and decreasing the amount of time my constituents have to spend commuting every day.

California has some of the largest regional transportation systems in the country including the Bay Area Rapid Transit, BART, CalTrain, the rail service between San Francisco and San Jose, and Metrolink, Southern California's regional transit system.

My State is facing a crisis. Without Federal highway dollars my local communities will not be able to eliminate bottlenecks on our highways to improve air quality. As a result, they will be out of conformity with Federal air quality regulations, and will lose even more Federal highway dollars. This will become a never-ending cycle. Without money they can't conform, and without conforming they can't get money.

California also needs this bill for economic reasons. According to the Department of Transportation, each $1 billion in new infrastructure investment creates 47,500 new jobs: 26,500 of

these are directly related to construction, engineering, contracting, and other on-site employees, and 21,000 are indirect jobs resulting from the spending associated with the investment.

We would not have to wait long to feel the benefits of this transportation bill. Transportation construction contractors hire employees within a few weeks of obtaining a project contract. These employees begin receiving paychecks within 2 weeks of hiring. In other words, if the bill is passed tomorrow, three weeks from now construction sites would be bustling with activity. We can't afford to delay.

In an economic recovery that has so far been jobless, the Federal Government must do what it can to create jobs.

Improving our transportation infrastructure is one of the critical things we can do to create all sorts of jobs.

According to the California Employment Development Department, job growth in the coming year in California will be a dismal 1 percent about 142,000 jobs in all—barely more than half the 10 year average.

California needs a robust transportation bill to help clean the air, ease congestion on the roads, and create jobs.

Mr. CHAMBLISS. Mr. President, today I rise in opposition to the final passage of S. 1072, the ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, SAFETEA.'' However, this vote does not come without great difficulty, because I understand how vital this legislative package is to the transportation infrastructure of Georgia and the country as a whole.

I understand that the future growth of my state largely depends on a robust transportation program, particularly in Atlanta and its surrounding counties. Georgia's commuters are suffering from some of the most notorious congestion in the country and without the crucial funds from the reauthorization of the highway funding bill, the time they spend commuting will only get worse. I also clearly understand that the funding from this bill will be used for highway and transit projects that would greatly enhance the vast transportation infrastructure in Georgia. However, I believe that these improvements can be made in conjunction with sound fiscal policy.

Last year, in a vote that I did not support, the Senate moved to increase the contract authority in the budget resolution for transportation spending to $272 billion. The SAFETEA bill on the floor of the Senate today breaks this unprecedented level by further increasing the contract authority by $36 billion, this being an increase of 46 percent over the previous level. In other words, to pass the Senate's version of the SAFETEA legislation, the Senate will have to vote to set aside its own budget resolution. In addition, the legislation contains a significant funding gap between the desired spending levels and the anticipated transportation-related excise tax receipts. Simply put, the gas tax receipts used to finance most federal surface transportation projects will not keep pace with government spending. Over the next 6 years, the Congressional Budget Office projects that the gas tax receipts for highways and transit will generate roughly $233 billion—about $80 billion less than the contract authority provided in the SAFETEA legislation on the floor of the Senate. The Finance Committee has produced a plan to make up the difference in a series of revenue boosting maneuvers that simply move revenue generators out of general revenues into the Highway Trust Fund. However, at the end of the day when we realize that there just isn't enough money from the Highway Trust Fund to pay for this bill, inevitably, the burden will fall on the General Fund to make up the difference. The deficit will continue to grow and that is an option that I cannot support.

In this time of soaring budget deficits, we must hold the line on spending. We must draw a line in the sand and say that we will not continue to lay the burden of these ever increasing deficits on the shoulders of our children and our grandchildren, because they will pay the price of Congress's profuse spending habits. It is up to us to monitor ourselves and if we do not start by limiting the spending contained within this bill, the deficit will only increase. I am not willing to leave these problems to be dealt with by future generations. Our President has given us an amount that he would support for the cost of this highway bill. He has requested that we limit our spending to $256 billion to work with over the next 6 years. Even with this limitation, this figure represents a 21 percent increase over the Transportation Equity Act for the 21st Century (TEA–21), enacted in 1998. I believe that this rational increase would still have a positive effect on Georgia's transportation infrastructure, while doing significantly less damage to our Nation's economy.

I urge my colleagues who will be Senate conferees when this legislation moves to conference to pursue fiscal responsibility and work to reduce the total cost of this bill before the conference report returns to the Senate floor for final passage.

Mr. LEVIN. Mr. President, Michigan is a long time donor State that for 50 years or so has sent more gas tax dollars to the Highway Trust Fund in Washington than are returned back in transportation infrastructure spending.

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, SAFETEA, addresses this inequity by returning more money to donor States which for years have seen a portion of their highway trust fund contributions shifted to ''donee'' States. These ''donee'' States have benefitted from antiquated Federal highway formulas which give them more Federal highway funding than they paid into the highway trust fund.

I have been fighting to correct the inequity faced by donor States like Michigan for decades. We have made some progress, but we won't be satisfied until we get the full return on our gas tax dollars after the costs of administering the program are allocated. For instance, in 1978, Michigan was getting somewhere around 75 cents on our gas tax dollar. The 1991 ISTEA bill brought us up to approximately 80 cents per dollar and the 1998 TEA–21 bill guaranteed a 90.5 cent minimum return for each State.

SAFETEA moves us in the right direction toward correcting the inequity in the distribution of highway funding. I cosponsored an amendment that would have, if adopted, provided additional funding to donor states to bring them more quickly to equity. While the inequity should be corrected immediately rather than gradually over the life of the 6-year bill, it is an important step forward that donor States will all achieve a 95 cent return by the sixth year of this bill, a level that is much better than in prior bills.

Under this legislation, Michigan will get more than $2.1 billion additional dollars over 6 years to pay for badly needed transportation infrastructure improvements. In all, under the formula portion of this bill, Michigan will get over $7.4 billion over 6 years which represents more than a 40 percent increase over TEA–21, plus additional funds from other sections of the bill.

Our Nation has significant infrastructure improvement needs. For instance, according to the Federal Highway Administration, FHWA, congestion at border crossings can lead to delays of over 80 minutes. The lost productivity from this congestion has a negative impact on the Nation's economy. It also causes environmental problems in the border regions. We need to get trucks and people across the borders more quickly and with greater safety.

I am pleased the bill managers have accepted my proposal to distribute funding for the bill's enhanced and expanded Border Planning, Operations, and Technology Program based on documented usage and trade flows at individual border crossings. Under my proposal, border infrastructure funding would be distributed using criteria that is based on the cargo weight, trade value and the number of commercial and passenger vehicles crossing the particular border. This means our Nation's busiest border crossings will get the Federal funding needed to improve this important economic infrastructure. Distributing the funds by this formula gives border projects more stability and predictability and is good public policy. It will also enhance U.S. economic activity and growth by facilitating the more efficient flow of goods, services and people at U.S. border crossings. Michigan, home to our Nation's top two commercial vehicle

crossings on the northern border, the Ambassador Bridge in Detroit and the Blue Water Bridge in Port Huron, would receive approximately $204.5 million from this account over 6 years to improve its border infrastructure.

SAFETEA also makes an important change to the ethanol tax subsidy that will benefit my State of Michigan. At issue is the fact that the current ethanol subsidy comes at the expense of the highway trust fund and those States such as Michigan and Ohio that consume ethanol. Under current law, ethanol consuming States end up, under the formula, getting less back in federal highway funds. The Michigan Department of Transportation estimates that Michigan's annual revenue loss is $37 million a year in Federal aid because of the way the taxes on ethanol are credited.

To fix this, this bill shifts the cost of the ethanol tax subsidy from the highway trust fund to the general fund. Once ethanol taxes are credited at the same rate as gasoline, 18.4 cents a gallon compared to the current 13.2 cents a gallon on ethanol, for the purposes of calculating inputs into the highway trust fund, the highway trust fund will grow. So, too, will the size of Michigan's and other ethanol consuming States' contributions credited to the trust fund. The bottom line is with the ethanol fix, Michigan will receive more Federal highway dollars over the life of the 6-year bill.

This legislation provides $56 billion for mass transit over 6 years, a significant increase over the prior reauthorization bill. Under the transit title, Michigan would get $656 million over 6 years, an increase of $230 million or 53 percent over TEA–21. This moves us in the right direction on mass transit.

There are few Federal investments that will have such a large and immediate impact on job creation and economic growth than investments in our Nation's transportation infrastructure. The efficient functioning of our economy depends on a reliable multimodal interstate system that is made up of highway, bus, rail, shipping and air transportation. We need to maintain and improve these systems and we need to address the costs and frustration of increased traffic congestion. This bill goes a long way to improve the operation of our transportation system and to keep us competitive in a global marketplace.

The Federal infrastructure investment of $318 billion contained in this bill, while increasing the efficiency of our transportation system, will also spur the creation of thousands of jobs in every State across this Nation. The Department of Transportation estimates that every $1 billion in new Federal investment creates more than 47,500 jobs. With Michigan standing to gain over $7.4 billion dollars over the 6-year bill, an increase of more than $2.1 billion over the last 6 years, this bill would mean almost 100,000 new jobs in Michigan and the retention of almost 250,000 jobs. These are good paying jobs and jobs that Michigan needs for economic recovery and to replace some of the jobs we have lost in manufacturing. These are jobs that we need in Michigan and throughout our country.

Mr. CRAIG. Mr. President, I wish to express my view regarding the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, SAFETEA, S. 1072.

This legislation reauthorizes our Nation's surface transportation, freight, and mass transit programs, which are so vital to the infrastructure of my State of Idaho and to the Nation. Idaho is considered a ''donee'' State, one that receives more Federal dollars from the Highway Trust Fund, HTF, than we contribute. This is due to the low population density, reduced tax base, and several miles of interstate that run throughout the State.

Thanks to the hard and careful work of my colleague, Senator CRAPO, who serves on both the Banking, Housing, and Urban Affairs committee and the Environment and Public Works committee, I believe Idaho has received fair and equitable treatment in this bill. I applaud the committee and especially Senator CRAPO for recognizing that large, rural States have to maintain the infrastructure that our farmers, long-haul truckers, tourists—and most important, our citizens—use every day.

However, Mr. President, I would like to voice my concern with the legislation now before us.

Last year the President proposed his version of SAFETEA to Congress. Both House and Senate committees of jurisdiction quickly began their work to forge a bill that addresses our Nation's needs. Although neither was successful in bringing the bill to the floor, after a year of work, the Senate will vote on our version of the bill today.

As I have seen it, the President's proposal would authorize $256 billion in highway and transit funding over 6 years. This is a $45 billion, or 21 percent increase from the 1998 reauthorization referred to as ''TEA–21.'' The legislation before the Senate is calculated at a total cost of $318 billion, with $311 billion of the total amount under contract authority.

For obvious reasons, my concern is that this legislation sends the wrong signal to the American taxpayers. Before I go further, I must say that I strongly support the need to maintain and improve the infrastructure of this Nation. I also understand the impact this legislation has on creating jobs and its role in strengthening our economy, which continues to grow and expand.

The benefits of this bill are many, but I cannot support the funding levels proposed in this bill. Recently the Congressional Budget Office, CBO, predicted that the federal deficit will reach $477 billion this year. These figures are sure to fluctuate, but I think Congress must act responsibly by keeping spending under control.

The bill before the Senate is roughly $62 billion above the administration's request, and $24 billion over budget. We have already faced a motion to waive the budget today, which directly undermines the budget we all agreed to last year for FY2004.

It is a tough choice for me to oppose this bill. Thanks to the bill's managers, Idaho will greatly benefit from the formula's allocation for both our highway system and our transit needs. However, I cannot allow for future generations of Americans to pay for the fiscal irresponsibility of our actions now.

It is my hope that when this legislation is placed before a conference of the House and Senate, that common sense and fiscal responsibility prevails, and I will be able to cast a vote in favor of a final conference report.

Mr. GRASSLEY. Mr. President, I will respond to some criticisms of the Finance Committee package.

There is an allegation that the Finance Committee did not pay for this bill. Let me be clear. The Finance Committee adhered to the following principles in carrying out its responsibilities:

The Finance Committee funded the trust fund by increasing the amount of excise tax receipts retained by the trust fund.

The Finance Committee funded the bill at the outlay number—that is the cash flow impact on the trust fund. Some have pointed to obligations and contract authority numbers. Those numbers were not and are not relevant to the Finance Committee role. It is unfair to compare numbers for contract authority or obligation with receipts. That is apples and oranges. The Finance Committee matched receipts and outlays.

In accordance with Finance Committee members' desires, the deficit impact of matching receipts and outlays was offset with general fund revenue raisers. Those numbers match up.

That is the bottom line. The Finance Committee did its job.

I ask unanimous consent to have printed in the RECORD a summary of the Finance Committees funding title for the highway bill.

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

SUMMARY OF FINANCE COMMITTEE FUNDING TITLE

Finance Committee jurisdiction extends to the highway use-related excise taxes, the highway trust fund, and the expenditure authority of the highway trust fund. The Finance Committee acted primarily on the cash flow into and out of the trust fund. Cash flow into the trust fund is represented by trust fund excise tax receipts. Cash flow out of the trust fund is represented by trust fund outlays. Matters involving contract authority and obligation limits are not Finance Committee subject matter and the committee did not speak to them.

According to the Congressional Budget Office, CBO, current law trust fund receipts will total $227.8 billion over the six year period. CBO projects $196 billion in highway account receipts and $31.8 billion in mass transit account receipts.

The authorizing committees' actions placed demands on the trust fund of $231 billion for highways and $36.6 billion for transit for the six year authorization period. That means a total of $267.6 billion in demands on the trust fund.

Prior to Finance Committee action, demands on the trust fund exceeded receipts by $39.8 billion over the 6-year period. To make up this funding gap, the Finance Committee developed two categories of proposals. The first category increased trust fund receipts by tightening compliance. The second category included accounting changes that raised trust fund receipts.

The compliance changes raised trust fund receipts by $5.6 billion over the authorization period. These changes were also scored as revenue raisers by the Joint Committee on Taxation. These proposals have no impact on the budget deficit.

The budget resolution assumes that 2.5 cents per gallon of gasohol receipts, currently held by the general fund, will be transferred to the trust fund. That transfer raises trust fund receipts by $5 billion over the authorization period. The Finance Committee also assumed that trust fund balances would be spent down by $7.5 billion over the authorization period. Adding all of these changes together with the compliance changes, the Finance Committee closed the gap by $18.1 billion over the authorization period. That left a funding gap of $21.7 billion.

The Finance Committee proposed to close this gap with a group of trust fund accounting changes. These proposals raise trust fund receipts by shifting the burden of tax policies from the trust fund to the general fund. In the view of Finance Committee, these tax policy benefits have nothing to do with highway use and should not burden the trust fund. Included in these proposals is a repeal of the partial exemption for ethanol-blended fuels. The tax benefit for ethanol, like nearly all energy production incentives, is transferred to the general fund through a tax credit. The same effect is applied to refunds for special categories of users such as state and local governments. Finally, the highway trust fund will earn interest on its balance, so that the highway and transit programs are not prejudiced. This second category of proposals closed the funding gap, but, without revenue offsets, would have increased the budget deficit by $21.7 billion.

Finance Committee members decided that this second category of proposals should not have a deficit impact. To this end, the Finance Committee title includes a group of loophole closers previously approved by the committee.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to have printed in the RECORD a copy of Finance Committee staff prepared analysis. This analysis reconciles trust receipts and outlays. It also reconciles the deficit impact of the proposal with general fund revenue raisers.

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

TEA 21 Reauthorization bill funding projections, February 2, 2004

[In billions]

Highways:	
Contract Authority	255.0
Obligation Limitation	238.0
Commerce Obligation	6.5
Outlays	231.0
Amount needed to Fund EPW/Commerce Spending	231.0
Gas Tax Baseline—Projected Gas Tax Receipts	196.0
Additional Funding Needed	35.0
Revenues additions to Highway Trust Fund:	
Fuel Fraud Compliance and Mobile Machinery	5.0
2.5 gasohol	5.0
**5.2 Gasohol	9.0
**Interest on Trust Fund balance	2.0
**Gas Guzzlers	0.5
**Amend Fuel refund mechanism in IRC	8.0
Spend down partial Trust Fund balance	5.5
Additional Revenue for Highway Trust Fund	35.0
Transit:	
Baseline 2.86 cents from each gallon taxed	31.8
Spenddown of partial MTA balance	2.0
Fuel Fraud	0.6
**Interest on MTA	2.2
Total Transit from Trust Fund	36.6
**Revenue Offsets:	
Expansion of limitation on depreciation of autos	0.03
Tax Shelters/Corporate Governance	15.8
Enrol Tax Shelters	3.2
Expatriation	3.3
Total Offsets	22.3

Mr. GRASSLEY. There has also been some mention of the use of a provision accelerating the payment of corporate estimated taxes. The provision has been attacked as a ''gimmick.'' It has been attacked as ''funny money.'' The provision is fairly straight forward. It increases the payment of the third quarter corporate estimated tax deposits by 119% for 2009. This measure has the effect of shifting $11.4 billion from fiscal year 2009 to fiscal year 2010. It makes sure the bill will be offset for the five- and six-year periods.

Let the record reflect, Mr. President, that this technique and variations on it have been used frequently over the past decade. Most of the time these things were done without complaints from either side. Sometimes complaints were raised by those opposed to a particular bill on other substantive grounds.

Let's look at the history of enacted tax laws that contained these shifts.

In 1994, the Uruguay Round Agreements Act, that is, the landmark general agreement on tariffs and trade legislation contained several changes in payment dates for excise taxes. Check it out in section 712 of Public Law 103–415 of December 8, 1994. That legislation was overwhelmingly supported by both sides of the aisle.

In 1997, the Tax Relief Act of 1997 contained a change in the percentage for the ''safe harbor'' for payment of individual estimated taxes for 1998, 1999, 2000, 2001, and 2002. Check it out in section 1091 of Public Law 105–34 of August 5, 1997.

In 1998, the Trade and Tax Relief Extension Act of 1998 contained a change for the safe harbor for payment of individual estimated taxes. Check it out in section 2003 of Public Law 105–277 of October 21, 1998.

In 2001, the Economic Growth and Tax Relief Reconciliation Act of 2001, contained the much-criticized shift in corporate estimated tax payments. Check it out in section 801 of Public Law 107–16 of June 7, 2001.

In 2003, the Jobs and Growth Tax Relief Reconciliation Act of 2003 also contained the much-criticized shift in corporate estimated tax payments. Check it out in section 501 of Public Law 108–27 of May 28, 2003.

All of the laws mentioned above are major pieces of legislation. They were all bipartisan measures. All of them contained shifts in dates of payment of excise taxes, corporate taxes, or individual income taxes. Members should also be aware that these devices or similar devices were used in partisan bills by each side that did not become law. For example, the patients bill of rights legislation considered in the summer of 2001, contained a one day shift in Medicare provider payments. Some of the harshest critics of the corporate estimated tax shift were lead sponsors of that legislation.

Now, even though the corporate shift in this bill is a conventional practice, Senator BAUCUS and I agreed to delete it before this bill left the Senate floor. Our agreement is with Senators NICKLES and CONRAD. We will attempt to carry out our agreement but are subject to the cooperation of our colleagues.

Part of the legislative process is compliance with our budget rules. The Finance Committee offset its title over the five, six, and ten year period of the bill. Contrary to the critics' assertions, the corporate shift moved real money, corporate tax receipts, from one period to the other. I ask unanimous consent that a revenue table, prepared by the Joint Committee on Taxation, on the Finance Committee financing title, be inserted in the RECORD.

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

JOINT COMMITTEE ON TAXATION
February 2, 2004
JCX-11-04

ESTIMATED REVENUE EFFECTS OF THE CHAIRMAN'S MODIFICATIONS TO THE "HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION ACT OF 2004," SCHEDULED FOR MARKUP BY THE COMMITTEE ON FINANCE ON FEBRUARY 2, 2004

Fiscal Years 2004 - 2013

[Millions of Dollars]

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004-08	2004-13
Trust Fund Reauthorization - Extension of Highway Trust Fund and Aquatic Resources Trust Fund Taxes (through 9/30/09) and Expenditure Authority (through 9/30/09) [1]	DOE	*No Revenue Effect*											
The "Volumetric Ethanol Excise Tax Credit ('VEETC') Act"													
A. Alcohol and Biodiesel Excise Tax Credit and Extension of Alcohol Fuels Income Tax Credit													
1. Provide excise tax credits for biodiesel used to produce a qualified fuel mixture [2] ($1.00/gallon for agribiodiesel and $0.50/gallon for biodiesel) (sunset 12/31/06) [3]	fsoua 9/30/04	---	-41	-57	-16	---	---	---	---	---	---	-114	-114
2. Provide excise tax credit (in lieu of reduced tax rate on gasoline) to certain blenders of alcohol fuel mixtures (sunset 12/31/10)	fsoua 9/30/04	*No Revenue Effect*											
3. Provide that all gasoline excise tax revenues are deposited in the Highway Trust Fund and all alcohol fuels excise tax credits are paid from the General Fund [4]	fsoua 9/30/04	---	---	---	---	---	---	---	1,131	1,559	1,586	---	4,276
4. Repeal reduced-rate sales of gasoline for blending with alcohol and reduced-rate sales of alcohol fuel blends	fsoua 9/30/04	---	23	25	24	24	24	24	23	23	22	96	212
5. Transfer full amount of alcohol fuel excise taxes to the Highway Trust Fund	fsoua 9/30/03	*No Revenue Effect*											
6. Extension of section 40 alcohol fuels income tax credit (sunset 12/31/10)	DOE	---	---	---	---	-6	-13	-15	-10	-3	---	-6	-47
7. Provide outlay payments (in lieu of excise tax credits and refunds) to producers of alcohol and biodiesel fuel mixtures and users of neat alcohol and neat biodiesel fuels:													
a. Outlay effects [5] [6]	fsoua 9/30/04	---	-105	-114	-116	-117	-119	-121	-38	---	---	-452	-730
b. Revenue effects	fsoua 9/30/04	---	105	114	116	117	119	121	38	---	---	452	730
8. Extension of temporary additional duty on ethyl alcohol (sunset 1/1/11) [7]	DOE	*Negligible Revenue Effect*											
B. Biodiesel Income Tax Credit - provide income tax credits for biodiesel fuel and biodiesel used to produce a qualified fuel mixture ($1.00/gallon for agribiodiesel and $0.50/gallon for biodiesel) (sunset 12/31/06) [3]	fpasoua 9/30/04	*Revenue Effects Included in Item #A.1.*											
Total of The "Volumetric Ethanol Excise Tax Credit ('VEETC') Act"		**---**	**-18**	**-32**	**8**	**18**	**11**	**9**	**1,144**	**1,579**	**1,608**	**-24**	**4,327**

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004-08	2004-13
Fuel Fraud Prevention Proposals													
A. Aviation Jet Fuel - taxation of aviation fuel at the rack	[8]	---	397	427	431	434	437	437	435	433	432	1,689	3,863
B. Dyed Fuel Proposals													
1. Elimination of manual dyeing of fuel	[9]	---	---	43	46	47	47	47	47	47	47	136	372
2. Elimination of administrative review for taxable use of dyed fuel	paa DOE	*Negligible Revenue Effect*											
3. Extension of penalty on untaxed chemically altered fuel mixtures	DOE	*Negligible Revenue Effect*											
4. Terminate the use of dyed diesel fuel by intercity buses	fsoua 9/30/04	*Negligible Revenue Effect*											
C. Modification of Inspection of Records Proposals													
1. Authority to inspect on-site records	DOE	*Negligible Revenue Effect*											
2. Assessable penalty for refusal of entry	10/1/04	*Negligible Revenue Effect*											
D. Registration and Reporting Requirements													
1. Registration of all pipeline or vessel operators required for exemption of bulk transfers; penalty on knowing transfers to nonregistered person; Secretary must publish list of registered persons [10]	10/1/04	---	116	124	125	126	127	128	128	128	128	492	1,130
2. Display of registration	10/1/04	*Revenue Effects Included in Item D.1.*											
3. Certain reports filed electronically; penalty for failure to report	10/1/04	*Revenue Effects Included in Item D.1.*											
4. Increased penalty for failure to register	pia 10/1/04	---	2	2	2	2	2	2	2	2	2	8	19
5. Registration of persons within foreign trade zones	10/1/04	*Revenue Effects Included in Item D.1.*											
6. Information reporting for persons claiming certain tax benefits	10/1/04	*Negligible Revenue Effect*											
E. Import Proposals													
1. Tax at point of entry where importer not registered	DOE	2	8	8	8	8	8	8	8	8	8	33	72
2. Reconciliation of on-loaded cargo to entered cargo	DOE	*Negligible Revenue Effect*											
F. Miscellaneous Proposals													
1. Tax on sale of diesel fuel whether suitable for use or not in a diesel powered vehicle or train	DOE	*No Revenue Effect*											
2. Limit ultimate vendor refund claims on sales of fuel used for farming purposes	fsfnua DOE	*Negligible Revenue Effect*											
3. Permit ultimate vendors to administer credits and refunds of fuel tax	10/1/04	*Negligible Revenue Effect*											
4. Two-party exchanges	DOE	*Negligible Revenue Effect*											
5. Modifications of tax on use of highway vehicles	tpba DOE [11]	143	119	122	124	126	129	129	131	133	135	635	1,292
6. Dedication of revenue from certain penalties to the Highway Trust Fund	10/1/04	*No Revenue Effect*											
7. Nonapplication of export exemption to delivery of fuel to motor vehicles removed from the United States	sodma DOE	*No Revenue Effect*											
G. Total Accountability - taxation and reporting for blendstocks, transmix, and other products removed from terminals and refineries, including those in foreign trade zones	fsoua 9/30/04	---	100	106	107	108	108	108	108	107	107	421	958
H. Transfers from Airport and Airway Trust Fund to Highway Trust Fund	10/1/04	*No Revenue Effect*											
Total of Fuel Fraud Prevention Proposals		**145**	**742**	**832**	**843**	**851**	**858**	**859**	**859**	**858**	**859**	**3,414**	**7,706**

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004-08	2004-13
Definition of Highway Vehicle													
A. Exemption From Certain Excise Taxes for Mobile Machinery Vehicles	[12]	---	79	106	106	106	106	106	106	106	106	396	923
B. Modified Definition of Off-Highway Vehicle	[12]	*Negligible Revenue Effect*											
Total of Definition of Highway Vehicle	**[13]**	**79**	**106**	**106**	**106**	**106**	**106**	**106**	**106**	**106**	**106**	**396**	**923**
Excise Tax Reform and Simplification Proposals													
A. Highway Excise Taxes													
1. Repeal gas guzzler tax for limousines	DOE	-2	-4	-4	-4	-5	-5	-5	-6	-6	-7	-19	-48
2. Dedication of gas guzzler tax to Highway Trust Fund [14]	DOE	*No Revenue Effect*											
3. Repeal of 4.3-cent General Fund excise taxes on railroads diesel fuel and inland waterway fuel:													
a. Railroads	10/1/04	---	-139	-146	-149	-154	-158	-162	-166	-171	-175	-588	-1,420
b. Inland waterway	10/1/04	---	-11	-15	-15	-16	-16	-17	-17	-18	-18	-57	-143
B. Aquatic Excise Taxes													
1. Eliminate Aquatic Resources Trust Fund and transform Sport Fishing Restoration Account	10/1/04	*No Revenue Effect*											
2. LED devices exempted from sonar devices suitable for finding fish [15]	[16]	---	[17]	[17]	[17]	[17]	[17]	[17]	-1	-1	-1	-2	-4
3. Repeal of Harbor Maintenance tax on exports [7]	bo/a DOE	*Negligible Revenue Effect*											
4. Cap on excise tax on certain fishing equipment [18]	[16]	---	-3	-3	-3	-3	-3	-4	-4	-4	-4	-16	-31
5. Reduction in rate of tax on portable aerated bait containers [19]	10/1/04	---	[17]	[17]	[17]	[17]	[17]	[17]	[17]	[17]	[17]	[17]	-1
C. Aerial Excise Taxes													
1. Clarification of excise tax exemptions for agricultural aerial applicators and exemption for certain fixed-wing aircraft	fuoata DOE	-2	-4	-4	-4	-4	-4	-4	-4	-4	-4	-18	-38
2. Modification of rural airport definition	4/1/04	-2	-3	-3	-3	-4	-4	-4	-4	-4	-5	-15	-36
3. Exemption from ticket taxes for transportation provided by seaplanes	ta 3/31/04	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-10
4. Certain sightseeing flights exempt from taxes on air transportation	[20]	-5	-6	-7	-7	-7	-7	-8	-8	-9	-9	-32	-72
D. Alcoholic Beverage Excise Taxes													
1. Repeal of occupational taxes relating to distilled spirits, wine, and beer	[21]	-66	-78	-78	-78	-78	-78	-78	-78	-78	-78	-378	-768
2. Suspension of limitation on cover over of rum excise tax revenues (maintain cover over at $13.25 per proof gallon and increase to $13.50 on 10/1/04) (sunset 12/31/05); require transfer to Puerto Rico Conservation Trust Fund	abiUSa 12/31/03 [22]	-67	-93	-22	---	---	---	---	---	---	---	-182	-182
E. Sport Excise Taxes													
1. Exempt custom gunsmiths from firearms excise tax [23]	[24]	[17]	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-7
2. Modified taxation of imported archery products [25]	[26]	[17]	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-8
3. Treatment of tribal governments as States for purposes of Federal wagering excise and occupational taxes	[21]	-1	-3	-3	-4	-4	-4	-4	-4	-4	-4	-14	-33

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004-08	2004-13
F. Other Proposals													
1. Income tax credit for distilled sprits wholesalers and for distilled spirits in control state bailment warehouses for costs of carrying Federal excise taxes on bottled distilled spirits	tyba DOE	-4	-29	-33	-34	-35	-35	-35	-36	-36	-37	-135	-314
2. Credit for taxpayers owning commercial power takeoff vehicles (sunset 12/31/06)	tyba DOE	---	-25	-40	-14	---	---	---	---	---	---	-79	-79
3. Credit for auxiliary power units installed on diesel-powered trucks	ppaia DOE	-1	-1	-1	---	---	---	---	---	---	---	-3	-3
Total of Excise Tax Reform and Simplification Proposals		**-151**	**-402**	**-362**	**-318**	**-313**	**-317**	**-324**	**-331**	**-338**	**-345**	**-1,550**	**-3,197**
Miscellaneous Proposals													
A. Motor Fuel Tax Enforcement Advisory Commission	DOE	*No Revenue Effect*											
B. National Surface Transportation Infrastructure Financing Commission	DOE	*No Revenue Effect*											
C. Treasury Study of Fuel Tax Compliance and Interagency Cooperation	DOE	*No Revenue Effect*											
D. Funding for Studies of Supplemental or Alternative Financing for the Highway Trust Fund	DOE	*Estimate Will Be Provided by the Congressional Budget Office*											
E. Treasury Study of Highway Fuels Used by Trucks for Non-transportation Purposes	DOE	*No Revenue Effect*											
F. Delta Regional Transportation Plan [27]	DOE	*No Revenue Effect*											
G. Increase exclusion for employer-provided transit and vanpool benefits to $120 per month	bra DOE	-2	-9	-12	-12	-15	-17	-21	-22	-25	-27	-50	-162
Total of Miscellaneous Proposals		**-2**	**-9**	**-12**	**-12**	**-15**	**-17**	**-21**	**-22**	**-25**	**-27**	**-50**	**-162**
Proposals to Replenish the General Fund													
A. Expansion of Limitation on Depreciation of Certain Passenger Automobiles	ppisa 2/2/04	42	112	40	-52	-45	-43	-20	---	---	---	97	34
B. Proposals Designed to Curtail Tax Shelters													
1. Clarification of the economic substance doctrine and related penalty Proposals	Ta 2/2/04	341	1,163	1,282	1,156	1,197	1,323	1,472	1,673	1,906	2,172	5,140	13,686
2. Proposals relating to reportable transactions and tax shelters	[28]	30	76	119	120	124	131	139	150	164	179	469	1,232
3. Modification to the substantial understatement penalty	tyba DOE	---	---	7	15	23	26	30	34	38	38	45	211
4. Impose a civil penalty (of up to $5,000) on failure to report interest in foreign financial accounts	DOE	[29]	[29]	[29]	[29]	[29]	[29]	[29]	[29]	[29]	[29]	1	3
5. Actions to enjoin conduct with respect to tax shelters	DOE	*Negligible Revenue Effect*											
6. Understatement of taxpayer's liability by income tax return preparer	dpa DOE	*Negligible Revenue Effect*											
7. Frivolous tax submissions	[30]	3	3	3	3	3	3	3	3	3	3	15	30
8. Regulation of individuals practicing before the Department of Treasury	ata DOE	*No Revenue Effect*											
9. Extend statute of limitations for undisclosed listed transactions	[31]	---	---	1	1	1	1	1	1	1	1	3	8

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004-08	2004-13
10. Deny deduction for interest paid to the IRS on underpayments involving certain tax motivated transactions	tyba DOE	---	---	1	1	3	4	4	4	4	4	5	25
11. Authorize additional $300 million per year to the IRS to combat abusive tax avoidance transactions [32]	DOE	*No Revenue Effect*											
C. Other Corporate Governance Proposals													
1. Affirmation of consolidated return regulation authority	[33]	*Negligible Revenue Effect*											
2. Chief executive officer required to sign declaration as part of corporate income tax return	rfa DOE	*Negligible Revenue Effect*											
3. Denial of deduction for certain fines, penalties, and other amounts	generally apoia 4/27/03	176	10	10	10	10	10	10	10	10	10	216	266
4. Denial of deduction for punitive damages	dpoia DOE	10	29	30	31	32	33	34	35	36	37	132	307
5. Increase the maximum criminal fraud penalty for individuals to the amount of the tax at issue	uaoataoa DOE	---	---	[29]	[29]	[29]	[29]	[29]	[29]	[29]	[29]	[29]	5
6. Double certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements	oyo/a DOE	2	1	1	[29]	[29]	[29]	[29]	[29]	[29]	[29]	4	6
D. Enron-Related Tax Shelter Proposals													
1. Limitation on transfer or importation of built-in losses	Ta 2/13/03	128	123	136	149	164	180	198	218	240	264	700	1,800
2. No reduction of basis under section 734 in stock held by partnership in corporate partner	da 2/13/03	12	16	24	29	33	35	33	32	33	34	114	281
3. Repeal of special rules for FASITs	on 2/13/03	*Negligible Revenue Effect*											
4. Expanded disallowance of deduction for interest on convertible debt	diia 2/13/03	6	88	90	94	96	98	101	103	106	109	374	891
5. Expanded authority to disallow tax benefits under section 269	aa 2/13/03	3	9	10	10	11	11	12	12	13	14	43	105
6. Modification of interaction between subpart F and passive foreign investment company rules	[34]	23	15	8	4	5	6	8	10	12	15	55	106
E. Proposals to Discourage Expatriation													
1. Tax treatment of inversion transactions	[35]	172	137	140	168	202	242	290	348	418	493	819	2,610
2. Impose mark-to-market on individuals who expatriate	[36]	41	78	80	74	71	67	61	57	54	51	344	634
3. Excise tax on stock compensation of insiders in inverted corporations	generally 7/11/02	16	7	7	7	7	7	7	7	7	7	42	75
4. Reinsurance agreements	rra 4/11/02	[29]	[29]	[29]	[29]	[29]	[29]	[29]	[29]	[29]	[29]	2	5
F. Corporate Estimated Tax Payments Due July Through September of 2009 Increased to 119% of the Otherwise Required Amount	DOE	---	---	---	---	---	11,441	-11,441	---	---	---	---	---
Total of Proposals to Replenish the General Fund		**1,005**	**1,867**	**1,989**	**1,820**	**1,937**	**13,575**	**-9,058**	**2,697**	**3,045**	**3,431**	**8,620**	**22,320**
NET TOTAL		**997**	**2,259**	**2,521**	**2,447**	**2,584**	**14,216**	**-8,429**	**4,453**	**5,225**	**5,632**	**10,806**	**31,917**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

[Legend and Footnotes for JCX-11-04 appear on the following page]

Legend and Footnotes for JCX-11-04:

Legend for "Effective" column:

aa = acquisitions after
abiUSa = articles brought into United States after
apoia = amounts paid or incurred after
as = articles sold
ata = actions taken after
bo/a = before, on, and after
bra = benefits received after
da = distributions after
diia = debt instrument issued after
DOE = date of enactment
dpa = documents prepared after
dpoia = damages paid or incurred after
fpasoua = fuel produced, and sold or used, after
fsfnua = fuels sold for nontaxable use after
fsoua = fuel sold or used after
fuoata = fuel use or air transportation after
oyo/a = open years on or after
paa = penalties assessed after
pia = penalties imposed after
ppaia = property purchased and installed after
ppisa = property placed in service after
sodma = sales or deliveries made after
rfa = returns filed after
rra = risk reinsured after
ta = transportation after
Ta = transactions after
tpba = taxable periods beginning after
tyba = taxable years beginning after
tyba = taxable years beginning after
uaoataoa = underpayments and overpayments attributable to actions occurring after
30da = 30 days after

[1] The outlay effects of this provision will be estimated by the Congressional Budget Office ("CBO"). Aquatic Resources Trust Fund is to be restructured and the name changed under the Excise Tax Reform and Simplification Proposals, Item B.1. (Eliminate Aquatic Resources Trust Fund and transform Sport Fishing Restoration Account).
[2] Tax credits would be provided for on-road and off-road uses of biodiesel.
[3] This provision may also have indirect effects on Federal outlays for certain farm programs. Outlay effects will be estimated by the Congressional Budget Office.
[4] These effects result from application of the budget law for constructing CBO's baseline in the case of expiring excise taxes dedicated to trust funds. Under present law, the taxes on motor fuels dedicated to the Highway Trust Fund ("HTF") expire in 2005, and are assumed to be permanently extended in CBO's baseline, as required by budget law. The lower excise tax rates on alcohol fuels, which reduce revenue to the HTF, expire in 2007 and are also assumed to be permanently extended in CBO's baseline. The proposal would replace the lower excise tax rates on alcohol fuels with an excise tax credit that does not reduce revenue to the HTF and that expires in 2010. If this bill is enacted, CBO's subsequent baseline would not assume extension of the excise tax credit beyond its expiration because the requirement to assume extension only applies to excise taxes dedicated to trust funds. For purposes of this cost estimate, therefore, CBO assumes that the credit would expire as scheduled. This treatment generates changes in revenues and outlays beyond 2010.
[5] Estimate provided by the Congressional Budget Office. Negative numbers indicate an increase in outlays.
[6] The outlay payments for ethanol expire after December 31, 2010, and the outlay payments for biodiesel expire after December 31, 2006.
[7] Estimate provided by the Congressional Budget Office.
[8] Effective for aviation fuel removed, entered into the United States, or sold after September 30, 2004.
[9] Generally effective 180 days after the date on which the Secretary issues the regulations, which are required on or before June 30, 2004.
[10] Secretary must publish the list by June 30, 2004.
[11] The display and electronic identification device provisions are effective October 1, 2005.
[12] Generally effective after the date of enactment, except for fuel taxes, effective for taxable years beginning after the date of enactment.
[13] Negligible revenue effect.
[14] The gas guzzler tax, as amended, would generate between $71 million and $75 million per year in Federal tax receipts.
[15] Provision will result in a reduction in outlays of approximately $4 million over 10 years from the Sport Fish Restoration Trust Fund, successor to the Aquatic Resources Trust Fund.
[16] Effective for articles sold by the manufacturer, producer, or importer on and after October 1, 2004.
[17] Loss of less than $500,000.
[18] Provision will result in a reduction in outlays of approximately $52 million over 10 years from the Sport Fish Restoration Trust Fund, successor to the Aquatic Resources Trust Fund.
[19] Provision will result in a reduction in outlays of approximately $1 million over 10 years from the Sport Fish Restoration Trust Fund, successor to the Aquatic Resources Trust Fund.
[20] Effective with respect to transportation beginning on or after the date of the enactment, but shall not apply to any amount paid before such date.
[21] Effective on July 1, 2004, but shall not apply to taxes imposed for periods before such date.
[22] The transfer to the Puerto Rico Conservation Trust Fund is effective October 1, 2004.
[23] Provision will result in a reduction in outlays of approximately $7 million over 10 years from the Federal Wildlife Restoration Fund.
[24] Effective for articles sold by the manufacturer, producer, or importer on or before the first day of the month beginning at least two weeks after the date of enactment.
[25] Provision will result in a reduction in outlays of approximately $9 million over 10 years from the Federal Wildlife Restoration Fund.
[26] Effective for articles sold by the manufacturer, producer, or importer after the date of the enactment.
[27] The proposal has outlay effects which will be provided by the Congressional Budget Office.

[Footnotes for Table #04-2 016 R are continued on the following page]

Footnotes for Table #04-2 016 R continued:

[28] Effective dates for proposals relating to reportable transactions and tax shelters: the penalty for failure to disclose reportable transactions is effective for returns and statements the due date of which is after the date of enactment; the modification to the accuracy-related penalty for listed or reportable transactions is effective for taxable years ending after the date of enactment; the tax shelter exception to confidentiality privileges is effective for communications made on or after the date of enactment; the material advisor and investor list disclosure proposals applies to transactions with respect to which material aid, assistance or advice is provided after the date of enactment; the failure to register tax shelter penalty applies to returns the due date for which is after the date of enactment; the investor list penalty applies to requests made after the date of enactment; and the penalty on promoters of tax shelters is effective for activities after the date of enactment.

[29] Gain of less than $1 million.

[30] Effective for submissions made and issues raised after the first list is prescribed under section 6702(c).

[31] Effective for taxable years with respect to which the period for assessing deficiencies did not expire before October 1, 2003.

[32] Estimate is subject to review by the Congressional Budget Office.

[33] Effective for all taxable years, whether beginning before, on, or after the date of enactment.

[34] Effective for taxable years of controlled foreign corporations beginning after February 13, 2003, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

[35] Effective for certain transactions completed after March 20, 2002, and would also affect certain taxpayers who completed transactions before March 21, 2002.

[36] Generally effective for U.S. citizens who expatriate or long-term residents who terminate their residency on or after February 2, 2004.

Mr. JEFFORDS. Mr. President, section 4(f) of the highway bill provides important protections for historic sites, parks, recreation areas, and wildlife and waterfowl refuges throughout the country. With the increasing demand for transportation projects, it is important that we not lose sight of our natural treasures. We need to balance the growing need for transportation with responsible stewardship of our history and natural resources.

In my State of Vermont, we have a wealth of history and natural beauty. To see the wildlife that populate the Missisquoi Wildlife Refuge or the covered bridges used by our forefathers is to experience a heritage that we all want preserved for future generations.

Section 4(f) has helped preserve these treasures. The Revolutionary War site at Fort Vehemence on Route 7 in Pittsford, Vermont, was avoided as a result of 4(f).

An excellent collection of historic metal truss bridges across the Connecticut River were rehabilitated, not replaced, as a result of 4(f).

A road in the Danville Historic District was narrowed in order to keep the historic characteristics of the historic village because of 4(f).

While constructing a new highway in Vermont, we have discovered a significant archeological site containing artifacts from Native Americans, providing us with a piece of history that until now was not known. By documenting this site, we will expand our knowledge of Vermont's Native Americans. Also, because of 4(f) protections.

An amendment to 4(f) is included in this legislation. The objective of this amendment is to allow transportation projects and programs to move forward more quickly, while maintaining the protections of 4(f). Those protections assure that there will be public notice and opportunity for public review and comment on proposed de minimis determinations for transportation projects, and that affected agencies will concur in the decision of the Secretary of Transportation that there will be no adverse impact on a historic site, recreation area, park, or wildlife or waterfowl refuge.

The amendment would require the Secretary of Transportation, when making a finding that a transportation project or program will have a de minimis impact, to consider all avoidance, minimization, mitigation, and enhancement measures that have been incorporated into the project. This provision allows project sponsors to incorporate environmentally protective measures into the project from the beginning, in order to support a finding of de minimis impact. These mitigation measures must be backed by enforceable agreements and post-construction monitoring of the effectiveness of these impact mitigation measures, with identified contingency measures to backstop the primary mitigation measures. In other words, the mitigation measures must be carried and be shown to have the intended impact. If they are not having the intended impact, other measures must be used to ensure no adverse impact.

In addition to the 4(f) provisions, this contains some modest, common-sense provisions to assure the transportation planners will consider the location of important habitat, wetlands and other natural resources at the earliest stages of planning for new roads.

These provisions will make project delivery faster and more efficient. Currently, transportation projects are often planned without detailed information on core conservation areas, sensitive resources or important habitat that might lie within the selected corridor. These conflicts do not come to light until the environmental review process, which then becomes more expensive and time-consuming as transportation and resource officials try to reconcile infrastructure and conservation activities.

These provisions will help transportation planners in avoiding unnecessary impacts on wildlife habitat and in mitigating for unavoidable impacts of a project.

These provisions encourage States to utilize available wildlife habitat data and maps to inform the long range transportation planning process. Planners would be able to identify potential concerns at the earliest stage of planning, when options for minimizing impacts are greatest and costs of doing so are lowest.

Over 200 Americans die each year in wildlife-vehicle collisions, many more are injured and more than 1 million animals are killed on our roadways everyday.

State and Federal agencies spend considerable time and money both protecting natural areas and building transportation infrastructure. Unfortunately, conservation and growth efforts often happen independently and then come into conflict during the permitting and construction phases of a transportation project. These investments need to be coordinated. If conservation efforts are taken into account at the earliest stages of transportation planning, both priorities can be realized, in less time and at less cost.

The most significant threat to the biodiversity of this country is habitat loss. However, thoughtful, forward-looking transportation planning can go a long way towards reducing negative impacts and mitigating for unavoidable impacts.

Over the next few decades, the decisions we make regarding highways and the ensuring loss of habitat will determine the fate of species and America's biodiversity. These provisions are aimed at helping to preserve that biodiversity through coordinated planning.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I congratulate the managers for their hard work and efforts. Following the vote, there will be no further votes until after the Presidents Day recess. Therefore, the next vote will occur on Tuesday, February 24. I will have more to say on the schedule before we close this evening. I do thank all Members for their cooperation over the last 2 weeks.

Mr. BOND. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill, as amended, pass?

The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Nebraska (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) and the Senator from Nebraska (Mr. NELSON) would each vote ''yea.''

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

The result was announced—yeas 76, nays 21, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—76

Akaka	Daschle	Lincoln
Allard	Dayton	Lott
Allen	DeWine	Lugar
Baucus	Dodd	Mikulski
Bayh	Dole	Murkowski
Bennett	Domenici	Murray
Biden	Dorgan	Nelson (FL)
Bingaman	Durbin	Pryor
Bond	Enzi	Reed
Boxer	Feinstein	Reid
Breaux	Fitzgerald	Roberts
Bunning	Frist	Rockefeller
Burns	Grassley	Sarbanes
Byrd	Harkin	Schumer
Campbell	Hatch	Shelby
Cantwell	Hollings	Smith
Carper	Inhofe	Snowe
Chafee	Inouye	Stabenow
Clinton	Jeffords	Stevens
Cochran	Johnson	Talent
Coleman	Kennedy	Thomas
Collins	Landrieu	Voinovich
Conrad	Lautenberg	Warner
Cornyn	Leahy	Wyden
Corzine	Levin	
Crapo	Lieberman	

NAYS—21

Alexander	Graham (SC)	McConnell
Brownback	Gregg	Miller
Chambliss	Hagel	Nickles
Craig	Hutchison	Santorum
Ensign	Kohl	Sessions
Feingold	Kyl	Specter
Graham (FL)	McCain	Sununu

NOT VOTING—3

Edwards	Kerry	Nelson (NE)

The bill (S. 1072), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. BOND. 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.

Mr. INHOFE. Mr. President, I am going to make this very brief, but I do want to make a comment. This bill that we passed is a good bill. We heard all kinds of criticism. It is always difficult when you are dealing with formulas, but this is the first time in the history of this process that we have done it without going into something such as a minimum guarantee program that is purely political. I would like to have had all the States get up to 95 percent sooner. We just could not make it happen.

We have a safety portion of this bill that we never had before. We have environmental streamlining. I would have liked to have gone a lot further on that issue. Hopefully, we will be able to do it. Maybe we can do some good in conference. Nonetheless, we will get a lot more miles, literally, for the dollar than we ever have before.

I thank, one more time, Senator REID, Senator JEFFORDS, and Senator BOND. We worked very closely together. This certainly was not a partisan effort.

I thank our staffs, too. I am going to name my staff: staff director, Andy Wheeler; Ruth Van Mark; Marty Hall; James O'Keeffe; Nathan Richmond; Greg Murrill; Mitch Surrett; Laura Berry; Genevieve Erny; Frank Fannon, Angie Giancarlo; Loyed Gill; Ryan Jackson; Michele Nellenbach; John Shanahan; Jonathan Tolman; Brydon Ross; and Cori Lucero.

I say this very sincerely. I know it sounds mundane, but the public should know the hours people work up here on something like this. I am talking about all night long, several nights, and I just applaud them for doing it. I know other staff and Members have worked equally hard, so let me thank all of them for their dedication and the effort. I think we made history in terms of the length of time in which we were able to get a bill of this magnitude passed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, first I want to commend my good friend from Oklahoma for all of the effort he put into this bill. I know, having been in the position of being the chairman at one time, the incredible effort that goes into the production of a bill of this size. I know what his staff did, and I will give my commendation to the staff as well.

I emphasize also the importance to the Nation. This is a jobs bill. In fact, there is no other jobs bill that will do so much for different workers of this Nation. Everyone benefits. Those who are in the manufacturing area of all the tools and equipment that are necessary to provide the work all benefit by the tremendous effort that goes into improving roads throughout this Nation. Also, there is a tremendous effort put into it which requires machinery. Therefore, the companies that make the machinery benefit with increased production, increased utilization of workers, right on down through to the people who do the minimal things which are also so very important.

As far as the staffs goes, I would like to thank the staff of the Environment and Public Works Committee, on both sides of the aisle, for their efforts.

From my staff, I thank Ken Connolly, Ed Barron, Jeff Squires, Erik Steavens, Liz Ryan, Alison Taylor, and Carolyn Dupree; Catharine Ransom, Jo-Ellen Darcy, and J.C. Sandberg with Senator REID's staff. Chairman INHOFE's staff, I would like to acknowledge and recognize Andy Wheeler, Ruth Van Mark, Marty Hall and James O'Keefe; from Senator BOND's staff, Ellen Stein and Trevor Blackann.

These staffers have made tremendous sacrifices, working long hours and many days, to bring about the fruition of this bill. We are all proud of it, and the country is going to be proud of it. The more they see of it, the more they will like it, and the more people will benefit from having better jobs.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I join in the commendations particularly to Chairman INHOFE of the Environment and Public Works Committee, and the ranking member, Senator JEFFORDS, and my cohort on the Transportation Subcommittee, Senator REID, who also had the double pleasure of being the floor manager and probably deserves a day off before he sees his new granddaughter.

I join also in thanking all of the staff, and I will submit their names for the RECORD. I want my colleagues to know I had a tremendous staff working with me, Trevor Blackann, Ellen Stein, Heideh Shahmoradi, Kent Van Landuyt, and John Stoody. It was a major effort. I think we have crafted a good bill. This was a group effort. I thank each for their very hard work and dedication.

Senator INHOFE's staff: Ruth Van Mark, James O'Keefe, Gregory Murrill, Andy Wheeler, Nathan Richmond, Mitch Surrett, Angie Giancarlo, Marty Hall, Michelle Nellenbach, Laura Berry, Brydon Ross, Cori Lucero, and John Shananhan.

Senator JEFFORDS' and Senator REID's staff: Ed Barron, J.C. Sandberg, Jeff Squires, Erik Steavens, Elizabeth Ryan, Ken Connolly, Jo-Ellen Darcy, Chris Miller, and Alison Taylor.

There are many provisions in this bill that make me proud to have been a part of drafting SAFETEA. Some of which include:

Safety. For the first time in our recent transportation legislation history, safety is given a prominent position, being elevated to a core program. We have accomplished this by providing much needed funding to reduce highway injuries and fatalities. I am pleased to say we have accomplished this without the use of mandates.

We have heard numerous testimony from the administration that nearly 43,000 people were killed on our roads and highways last year. I am glad that the bill reflects the continued commitment to making not only investments in our infrastructure, but also to the general safety and welfare of our constituents.

Equity. Our bill moves to carefully balance the needs of the donor States while also recognizing the needs of donee States. While many people did not think it was possible to achieve, all donor States will receive a 95 cent rate of return at least by 2009. I am anxious to return to my home State of Missouri and report that we will now receive 95 cents back on every dollar, each year of this Act.

Like many of the donor States, Missouri has some of the worst roads in the Nation and the second worst bridges in the Nation. This bill will allow Missouri, as well as the other States, to address many of the Nation's major transportation infrastructure needs.

Furthermore, I am proud to announce that all States will grow at not less than 10 percent over TEA–21.

I am very pleased to report that this bill follows the Bond/Reid amendment by providing a 31 percent increase in funding over TEA–21.

This bill also addresses several environmental issues by providing the necessary tools to reduce or eliminate unnecessary delays during the environmental review stage. Projects more sensitive to environmental concerns will move through a more structured environmental review process more efficiently and with fewer delays.

And most importantly, our comprehensive 6-year bill at $255 billion will sustain over 2 million new jobs. These funds will support the much-needed jobs and economic stimulus that our nation currently needs.

In closing, I want to again thank my colleagues, Senators INHOFE, JEFFORDS, and REID for their leadership and support in moving this vital piece of legislation that is focused on the needs of our Nation's transportation system. I also want to thank the other Members of the Senate for their overwhelming bipartisan support and helping move this bill forward.

The PRESIDING OFFICER (Mr. KYL). The assistant Democratic leader.

Mr. REID. Mr. President, I will be brief. I know the distinguished Senator from Georgia wishes to speak. We have spoken on the floor at some length over the last 2 weeks about the cooperation that bound the four of us together. It really has been one where we have grown closer as friends and Senators.

We have a lot more work to do on this bill. I want to again express my appreciation to the Senator from Oklahoma. We have both served in the House. We have been in the Senate for a long time. During the past year, I have gotten to know the distinguished junior Senator from Oklahoma and

have developed a great deal of respect I did not have. The reason is that even though there are only 100 of us, on most occasions we do not work on a very close basis. We come through and vote, have committee hearings, and hear each other talk, but here we had no alternative but to sit down in the trenches and try to work out tremendous differences that we began with. We were able to do that.

Legislation is the art of compromise. Had Senator INHOFE stuck to his guns and I stuck to my guns, we would not have a bill. That is nothing bad. That is what legislation is all about, consensus building. I deeply appreciate the ability I have had to get to know my friend from Oklahoma much better.

I express my appreciation, of course, to my counterpart on the subcommittee, Senator BOND. I appreciate his good work. They both have excellent staffs. I have gotten to know them also.

Of course, Senator JEFFORDS and I, everyone knows of our close and longstanding relationship and how much we care about each other. I appreciate very much his work on this bill and his allowing me a little bit of freedom on a bill that normally but for the closeness of our relationship would not have occurred.

The other Senators have spoken about their staffs and how much they appreciate them and that they would submit the names for the RECORD and they ran off a lot of names. I have one staff person. No one knows this bill better than he does. No one knows the numbers better than he does. I am so well served by J.C. Sandberg. I appreciate so much the tireless efforts on his behalf. He was up until 3 in the morning this morning, last night, and many nights during the past 6 months. He has worked very long hours. I wish I could rattle off the names of lots of other people who worked with me on this bill, but the only person who did great work on my staff was J.C. Sandberg, which was exemplary. Not only has he rendered great service to me and the people of the State of Nevada, but I believe this entire country.

Also, my legislative director, Lisa Moore, has done good work. She has been around all the time helping J.C. and helping me, and I want her to know how much I appreciate her good work.

MORNING BUSINESS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Senate now be in a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

DIVERSITY VISA LEGISLATION

Mr. CHAMBLISS. Mr. President, today I am introducing legislation to fix a problem some of my colleagues have experienced in serving their constituents. Immigration case work is one of the top issues my State offices handle on a regular basis. Occasionally, people who are in the country legally and playing by the rules can slip through the cracks as they wait on the immigration process to run its course. With the massive caseload handled by Immigration Services, there are bound to be mistakes and this legislation allows the agency to remedy those mistakes in the limited situation of the Diversity Visa Program.

The case of an Atlanta couple, Charles Nyaga and his wife Doin, recently came to my attention. Charles Nyaga, a native of Kenya, came to the United States with his family as a student in 1996. He is currently pursuing a master's degree in divinity.

In 1997, he applied for the fiscal year 1998 Diversity Visa Program and the Immigration and Naturalization Service selected him. In accordance with the diversity visa requirements, Nyaga and his wife submitted an application and a fee to adjust their status to legal permanent resident. A cover letter on the diversity visa application instructed Mr. Nyaga as follows:

> While your application is pending before the interview, please do not make inquiry as to the status of your case, since it will result in further delay.

During the 8 months the INS had to review his application, Mr. Nyaga accordingly abided by what the INS told him to do and never made any inquiry. He unfortunately never heard back. His valid application simply slipped through the cracks because at the end of the fiscal year Mr. Nyaga's application expired, although a sufficient number of diversity visas remained available.

Mr. Nyaga and his wife took their case all the way to the Eleventh Circuit Court of Appeals. In a decision last year, the court found that the INS lacks the authority to act on Mr. Nyaga's application after the end of the fiscal year, regardless of how meritorious his case is. The court even went so far as to note that a private relief bill is the remedy for Mr. Nyaga in order to overcome the statutory barrier that prohibits the INS from reviewing the case in a prior fiscal year. The U.S. Supreme Court recently refused to take up the case.

My legislation would overcome this statutory hurdle for Charles Nyaga, his wife, and others who are similarly situated. The legislation would give the Department of Homeland Security the opportunity to reopen cases from previous fiscal years in order to complete their processing. The bill would still give the Department of Homeland Security the discretion to conduct background checks and weigh any security concern before adjusting an applicant's status.

I look forward to working with my colleagues and with homeland security officials to pass this legislation this year. We must provide relief in these cases. I believe this targeted legislation strikes the proper balance to provide thorough processing of diversity visa applications while not compromising the Department's national security mission.

I yield the floor.

Mrs. MURRAY. Mr. President, I rise this evening to introduce an important piece of legislation called the Guard and Reserve Enhanced Benefits Act of 2004. This bill is at the desk.

I ask unanimous consent to add the following cosponsors: Senator LEAHY and Senator REID of Nevada.

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

(The remarks of Mrs. MURRAY pertaining to the introduction of S. 2068 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Rhode Island.

THE STATION NIGHTCLUB FIRE

Mr. REED. Mr. President, I rise today to recall one of the most tragic events in the history of the State of Rhode Island. It was almost 1 year ago, on February 20, 2003, that a devastating fire destroyed the Station nightclub in West Warwick, RI, killing 100 people and injuring nearly 300 more. The impact of this horrific incident on our small State is beyond measure, as most Rhode Islanders either suffered a direct loss, or knew someone who died or was injured in this blaze.

The first anniversary of the fire will bring back painful memories for many in our community. I want to express my heartfelt condolences to the families of those who perished and to let them know that our thoughts and prayers remain with them and with the survivors who continue to struggle with the physical and mental toll of this horrible event.

Looking back on the West Warwick fire and its aftermath also reminds us that it brought out the best in our people. In the first minutes and hours of this tragedy, our firefighters, police, and emergency medical personnel performed heroically under terrifying circumstances, as did many of the patrons who were at the scene and helped to save others. Nearby small businesses like the Cowesett Inn restaurant were turned into triage centers, and first responders from throughout southern New England descended upon West Warwick to do whatever they could to help.

I visited victims at all of our hospitals and in Boston as well. I was inspired by their courage and the extraordinary skill and compassion of countless doctors, nurses and health professionals.

As our Nation continues to fight the war on terror, the response to the West Warwick fire provides a good illustration of the progress we have made—and

how far we have to go—in improving our emergency management capabilities. As the magnitude of the tragedy became known, the Rhode Island Emergency Management Agency and hospitals throughout southern New England activated emergency incident command systems, many of which were designed after September 11, 2001. The process of rescuing and treating victims, putting out the blaze, identifying bodies, accounting for the missing, providing crisis counseling for survivors put a tremendous strain on State and local agencies.

I have no doubt that Rhode Island's post-September 11 emergency management planning efforts, backed by Federal assistance programs through the new Department of Homeland Security, made a difference in responding to the West Warwick fire.

In the past year, Rhode Island's ability to respond to mass casualty events has been further improved with the help of Federal programs such as the State Homeland Security Grant Program, the Assistance to Firefighters Grant Program, Interoperable Communications grants, and the Department of Health and Human Services' bioterror response grants to hospitals. All told, Congress has provided more than $75 million to Rhode Island over the past 3 years for emergency management and terrorism prevention and response. Yet we continue to face tremendous challenges, and we need to do more.

I want to say a special word of thanks to my colleagues Senator GREGG and Senator HOLLINGS for their strong support in securing funding through the Department of Justice to reimburse State and local law enforcement agencies in Rhode Island for extraordinary expenses related to the fire.

The Station nightclub fire was a catastrophe. Fault will be appointed in the days ahead by the civil and criminal courts, but Rhode Island is already taking steps to ensure that a tragedy like this never happens again. The Rhode Island General Assembly passed the Comprehensive Fire Safety Act of 2003 to repeal the ''grandfather'' exemption from modern fire codes and require more sprinklers in places of public assembly, especially nightclubs. The law also bans pyrotechnics in most indoor venues and gives greater power to fire inspectors. The State fire marshal now faces the task of training the State's fire inspectors and meeting with businesses and institutions to explain how the code applied to individual buildings.

As State and local officials across the country reexamine their fire and building codes and step up enforcement of safety practices in public buildings. Congress should do everything it can to support this effort and to encourage both State and local governments and Federal agencies to adopt and strictly enforce the most current fire and building consensus codes. I was also proud to join my colleague Senator HOLLINGS in introducing the American Home Fire Safety Act—S. 1798—to require the Consumer Product Safety Commission to implement comprehensive fire safety standards for upholstered furniture, mattresses, bedclothing, and candles.

No one in Rhode Island will forget the tragic events of February 20, 2003, and I hope we will never forget the way Rhode Islanders came together in that dark hour to do whatever was needed to save lives and relieve the suffering of the victims. That generous spirit has continued. Over the past year, Rhode Islanders and Americans across the country have donated more than $3 million to the Station Nightclub Fire Relief Fund to help families affected by the tragedy, including children who lost parents in the fire.

We often hear that it is in times of crisis that a person's true nature is revealed. That standard applies to communities as well, and as we approach a painful anniversary that will again focus the world's attention on the sorrow and grief felt by so many Rhode Islanders, I believe the people of our State have much to be proud of for the way they responded to this tragedy. It is now our duty to do all that we can to make sure that no community ever again faces a catastrophe like this one.

I thank the Chair and I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

INDIAN BUDGET ISSUES

Mr. DASCHLE. Mr. President, 2 days ago I talked about the need to find a way to ensure that every American has access to health insurance and high-quality health care—and to counter the defeatism of some who suggest it isn't possible. As I said, the United States is the only industrialized country that has failed to achieve this goal. It is possible. It is a matter of political will, and we must show that we, as a Nation, have it.

Today I want to talk a little about a group of people who are counted among the insured in this country—Native Americans. They are counted among the insured, but the Government has failed utterly to deliver even basic health care to the vast majority of them.

Through treaty and statute, the Federal Government has promised health care to all Native Americans through the Indian Health Service. In fact, the Federal Government provides less than half what it would cost to provide basic clinical services to the current IHS user population.

Incredibly, the Federal Government spends twice as much per capita on medical treatment for Federal prisoners than it spends on treatment for Native Americans. Twice as much on Federal prisoners as Native American children.

Last year, and the year before that, I offered amendments to the budget resolution to make up the difference. During consideration of last year's budget resolution, we were two votes short of passing our amendment to add $2.9 billion in funding for IHS clinical services.

Every Democratic Senator voted for the funding; every Republican Senator voted against it. Republican leaders then offered an amendment to provide one-tenth of those funds—$290 million to the IHS. As meager as that increase was, it was welcome. Unfortunately, that amendment never made it through the conference with the House. Furthermore, when the Interior Appropriations bill was considered, the Republican support for that $290 million—their own proposal—had dried up.

This year, the President's budget does no better. The President's budget includes a $7 million increase for IHS clinical services—less than the cost of inflation, and about $3.4 billion short of what is needed to meet Native Americans' basic health care needs.

I have spoken many times on this floor about the ''life or limb'' test at the Indian Health Service. When funding is low—and that is pretty much all the time—treatment is rationed using the ''life or limb'' test.

If a Native American patient isn't at immediate risk of losing his or her life or a limb, then he or she is turned away. Of course, denying early treatment often leads to a worsening condition. Sometimes by the time their condition is bad enough to meet the ''life or limb'' test, the funding is simply gone.

People are suffering preventable long-term health effects, and even dying, because we—the U.S. Government—are failing to meet our responsibilities. Sometimes we grow numb to these realities.

We do not want to face them. We hear ''life and limb test'' and simply don't believe it. But this is the reality in Indian country. We have the power to fix it.

The Indian health care budget and the overall budget for Indian country were the subjects of discussion in several meetings I have had this week. Tuesday afternoon I met with, among others, John Yellow Bird Steele, president of the Oglala Sioux Tribe.

President Steele talked about what an affront to Indian country President Bush's fiscal year 2005 budget is. Inadequate funding for Indian health. Inadequate funding for Indian education. Inadequate funding for law enforcement. Inadequate for housing. There is only one area of the budget that was increased—the Department of the Interior's proposed reorganization of the Bureau of Indian Affairs and the Office of the Special Trustee that will oversee

the Interior Department trust reform efforts.

This reorganization plan was given a 50 percent increase in the President's budget. One who hasn't heard much about the trust reform issue might think that should be welcome news. But the truth is that Indian tribes and trust account holders strongly oppose the reorganization plan. This plan has been pursued without proper consultation with Indian tribes and over the vehement objections of Indian tribes.

So this administration has dedicated wholly inadequate resources to Indian country and, in distributing those scarce resources, has devoted its only increase to a proposal that Indian people vehemently oppose. In the process, the administration has ignored the needs of Indian health, education, law enforcement, and every other major priority facing Indian tribes and Indian people.

Again, Indian country needs are not theoretical. They are real, everyday needs.

Tuesday President Steele and other representatives of the Oglala Lakota people talked to me about a few of them. They reminded me that Pine Ridge has four judges and two prosecutors to serve the entire reservation. BIA law enforcement funds cover the salaries of those two prosecutors for only 6 months of the year. Because the tribe's general fund is limited, it cannot make up the entire difference. This year, the prosecutors volunteered their time for 3 months of the year.

Pine Ridge has 2 troopers to cover its 1,800 miles of roads. When there is a car accident on one of those roads, more often than not, the troopers will not be able to respond. There are more unattended crashes on Pine Ridge than attended crashes. On Pine Ridge, the ''first responders'' are often the next people who happen to drive by.

Waste water systems are inadequate—some underground pipes date back to the 1800s. Housing is inadequate—some homes have no electricity or running water. As Cora Whiting, a tribal council member, said to me, ''How many people in America are still living that way?''

Pine Ridge has an unemployment rate of 85 percent. Tribal leaders like President Steele and Cora Whiting know that the only way to improve that statistic is to bring economic development to the reservation. But it is impossible to attract businesses without the infrastructure necessary to support them. And we have a duty to help build it.

Yesterday I met with Chairman Harold Frazier of the Cheyenne River Sioux Tribe. We discussed many of these same issues. We talked about their unmet needs, and their story is all too close to that of Pine Ridge.

Their tribal court system is a perfect example. The Bureau of Indian Affairs' tribal priority allocations fund the Cheyenne River Tribal Court. This year, their funding is about $300,000 short of what they require to deliver the bare minimum of services. In essence, they have enough funds to pay salaries and benefits for an inadequate number of staff. They can pay for nothing else—no attorney fees, no supplies, no juror fees, nothing.

The Cheyenne River Sioux Tribe also faces some of the same infrastructure problems that the Oglalas and so many other tribes face. Water systems cannot maintain water pressure or support building upgrades that are essential to the provision of basic tribal services. And, of course, Chairman Frazier and I also talked at length about health care and the system that has failed them.

People tend to think of budgets as intellectual exercises—something that isn't binding or real. Even when we say we have balanced the budget—something we actually did in the 1990s—people tend not to believe it. And now that the failed fiscal policy of the last few years has turned projected surpluses into massive deficits, our credibility is even lower.

But budgets are not just numbers. They reflect choices about our priorities and our political will. They have real consequences for real people.

For several years, I have watched this administration and its allies defend tax cuts for the wealthy while they claim we ''can't afford'' to fund the Indian Health Service. We have borrowed money—from Social Security and other countries—to finance those tax cuts, but we have denied Indian children the health care that federal prisoners take for granted.

The fact that we choose to afford huge tax cuts for the wealthiest among us, or the construction of hospitals in Iraq, but choose not to afford health care or education or housing for Indian families is lost on no one in Indian country.

This budget isn't Indian country budget. It isn't America's budget. It is time to make our budget reflect America's true priorities, which are fair opportunities for every child in America, for their parents who work so hard to create a better life for them, and for their grandparents who deserve to retire with dignity.

That is the budget I'm going to be talking about and fighting for as this year unfolds.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. REED. I ask unanimous consent that the order for the quorum call be rescinded.

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

VETERAN PATRIOT MAX CLELAND

Mr. REED. Mr. President, I rise to respond to a scurrilous attack against the patriotism of a friend and former colleague, Max Cleland. In a townhall.com column by Ann Coulter, which is described as a conservative news and information Web site, scurrilous, unprincipled attacks have been leveled against a patriot, a warrior, and a friend. I want to put my response in context.

I had the privilege of serving in the U.S. Army for 12 years on active duty. I did some challenging things there: qualified as an Army Ranger, paratrooper, commanded a company in the 82nd Airborne Division of paratroopers. But I am not a combat veteran. I did not serve in a combat zone. Max Cleland, and many, many others, did. There is a difference between those who wear the uniform of the United States and those who served in a combat situation, particularly a situation such as Vietnam.

The difference is that in that situation, more than any others, you live constantly with a sense of your own mortality. At any moment, through any fire or mishap, you could die or be seriously injured. At any moment, you could see people, your fellow soldiers, die from injuries. And for officers such as Max Cleland there is a special burden that goes along with leadership—not just officers but also noncommissioned officers. You have to make tough decisions that some day could result in the death or injury of another. That is a very special type of service that is inherent in being in a combat zone.

Max Cleland served with distinction. The article that Miss Coulter wrote mocks his service, mocks his sacrifice, and, in doing so, mocks the service and sacrifice of thousands and thousands of Americans in the past and today across the globe.

For example, this is how she describes Max in some respects. In her words:

> Moreover, if we're going to start delving into exactly who did what back then, maybe Max Cleland should stop allowing Democrats to portray him as a war hero who lost his limbs taking enemy fire on the battlefields of Vietnam.

Let's get one thing straight right now: Max Cleland is an American hero.

Let me read from the citation he received for the Silver Star, obtained from Senator MILLER's Web site.

> Captain Cleland distinguished himself by exceptionally valorous action on 4 April, 1968 . . . during enemy attack near Khe Sanh.
>
> When the battalion command post came under a heavy enemy rocket and mortar attack, Captain Cleland, disregarding his own safety, exposed himself to the rocket barrage as he left his covered position to administer first aid to his wounded comrades. He then assisted in moving the injured personnel to covered positions.
>
> Continuing to expose himself, Captain Cleland organized his men into a work party to repair the battalion communications equipment, which had been damaged by enemy fire.
>
> His gallant action is in keeping with the highest traditions of the military service, and reflects great credit upon himself, his unit, and the United States Army.

Max Cleland is a hero. No one has to portray him as one; he is one.

With respect to how he lost his limbs, this goes on to say:

Cleland lost three limbs in an accident during a routine noncombat mission where he was about to drink beer with friends. He saw a grenade on the ground and picked it up. He could have done that at Fort Dix. In fact, Cleland could have dropped a grenade on his foot as a National Guardsman—or what Cleland sneeringly calls ''weekend warriors.'' Luckily for Cleland's political career and current pomposity about Bush, he happened to do it while in Vietnam.

Yeah, Max was really lucky to be in Vietnam—really lucky.

This is what happened. In Max's book:

My tour of duty in Vietnam was now almost over. In another month I'd be going home. I smiled, thinking of the good times waiting stateside.

''Oh, Captain Cleland.''

I looked around. It was Major Cralle who had come up to our position. ''The battalion needs a better radio hookup with the vision supply area,'' he said. ''I'd like you to send a radio relay team back there to improve communications.''

That meant setting up a radio relay station on a hill back at the division forward assembly area 15 miles to the east. Instead of sending a team alone, I decided to go with them to ensure they got set up properly.

It is what is called leadership, sacrifice, being willing to do yourself what you ask subordinates to do. That is not routine anytime. This was a combat mission in a combat area.

With two men, I pulled together some antennas and a generator and some radios and loaded them on a chopper. The three of us climbed in and the helicopter lifted off. Within minutes, we had settled down by the radio relay station. The men and equipment were unloaded, and I climbed back into the chopper intending to go down to battalion rear headquarters.

Then two ideas crossed my mind. First, it would be better to work personally with my team in setting up the radio relay. Second, I had a lot of friends at this relay station and now was a good time to have a cold beer with them.

First: I want my men to do the job. I am going to be there with them. By the way, I have comrades that I have served with and, you know, if I have a chance to be with them, and, oh, by the way—in his characteristic honesty—have a beer with them, I was going to do that.

I called to the pilot that I was getting out. He nodded and held the ship steady. I jumped to the ground, ran in a crouch until I got clear of the spinning helicopter blades, turned around and watched the chopper lift.

Then I saw the grenade. It was where the chopper had lifted off.

It must be mine, I thought. Grenades had fallen off my web gear before. Shifting the M–16——

Let me stop. I assume if he is carrying grenades and an M–16 this was not a recreational activity.

Shifting the M–16 to my left hand and holding it behind me, I bent down to pick up the grenade.

A blinding explosion threw me backwards.

The blast jammed my eyeballs back into my skull, temporarily blinding me, pinning my cheeks and jaw muscles to the bones of my face. My ears rang with a deafening reverberation as if I were standing in an echo chamber.

Memory of the firecracker exploding in my hand as a child flashed before me.

When my eyes cleared I looked at my right hand. It was gone.

I could go on, but I think that speaks volumes. Max thought, frankly, that it was his grenade. But regardless of whose grenade it was, I was always taught, as a leader, that if there was a grenade, a live grenade, somebody has to take care of it.

Now, maybe Miss Coulter would have simply said: Sergeant, go get that grenade—or maybe just turned around and run further away, leaving a live grenade, with a pin or without a pin, in the middle of a landing zone.

Max did what a good soldier does. We used to say at West Point: A good soldier marches to the sound of guns. And that is what he did when he picked up the grenade. He was horribly wounded. Everything was broken except his spirit.

But the fear that it was his grenade, that it was a dumb accident, was allayed years later. This is an article in Esquire magazine:

He lives with the fact that he asked for it. He was in college during Vietnam and left to join the Army because he'd always gone toward the action.

''March to the sound of the guns.''

He became the aide to a general stateside and fought to get shipped to 'Nam.

He fought to go to Vietnam.

Once in country, he was an army captain and saw little combat and fought to be sent into Khe Sanh.

Closer to the action—

And when Khe Sanh was over and they were mopping up, he almost bought the farm.

For thirty-one years, he figured it was his fault. Before he jumped out of the chopper, he'd checked his grenades to make sure the pins that activated them were bent and could not accidently fall out. Straight pins can get you killed. The next thing he knew, he was on the ground and saw a grenade beneath him. And then for thirty-one years he heard that explosion and thought, ''I've blown myself up with my own grenade.'' He got decorations but would have none of them, because to Max Cleland they sure . . . didn't cover a man who blows himself up. Then, this spring—

This was August 1999—

He was on a television show and told his story about that day at Khe Sanh, and later a guy called up and said, Hey, I was there, it wasn't your grenade, I saw it. And Cleland checked the caller out, and it seems the guy really was there. And this year—

In 1999—

Max celebrated Being Alive Day with him down in Georgia.

This is not an accurate portrayal of the service and sacrifice of Max Cleland. It is unprincipled and scurrilous. It defames him, and it defames people who wear the uniform of the United States.

She is not through yet:

Cleland wore the uniform, he was in Vietnam, and he has shown courage by going on to lead a productive life. But he didn't ''give his limbs for his country,'' or leave them ''on the battlefield.'' There was no bravery involved in dropping a grenade on himself with no enemy troops in sight. That could have happened in the Texas National Guard——

There is plenty of bravery there, the bravery of leading men in difficult circumstances, in the sight of the enemy or out of the sight of the enemy. It was the bravery of understanding instinctively that you could not leave a live grenade rolling around in a landing zone. It was the bravery of being willing to be with his men even though he could have easily dropped them off, waved from the helicopter, and flown off to a happy life, 1 month before his return to the United States.

It disturbs me about Max, but Max is quite a man. But this also disturbs me about—what does it say about our soldiers today in Iraq, about the soldiers I visited, National Guardsmen and regular soldiers, at Walter Reed, who were injured, critically injured, in vehicle accidents and other mishaps that are part of a combat operation?

They did not sacrifice their limbs and their spines for our country? Is that what she is saying? Is that what we are going to say when we pat them on the back and say thanks for your service? There are no excuses for this kind of unprincipled attack on an individual, unsubstantiated by the record, an attack, as I say again and again, not only denigrates Max Cleland, it denigrates everyone who wore the uniform of the United States and wears it today. It denigrates particularly those individuals—and I must again emphatically say, I did not serve in combat—but those individuals who today serve in a combat area, who wake up every morning thinking it may be their last moment, who wake up every morning thinking that they may have to order people to do things that will cost them their lives.

It is an experience that I have not known, very few people in this Chamber have known. It is the mark of true heroism and courage, and day in and day out men like Max Cleland do it. And to suggest that he is not a hero, to suggest that his sacrifice was some type of stunt gone bad, some type of foolishness is beneath contempt.

I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I commend the distinguished Senator from Rhode Island for his powerful words and for sharing his insights with us on this extraordinary demonstration of verbal violence. He has laid out the record very well.

I am appalled that anybody could say the things that the Senator from Rhode Island has now reported having been said by Miss Coulter. I thank him for setting the record straight.

I would take it one step further. I think Miss Coulter owes Max Cleland an apology, and every other veteran in this country an apology. For anyone to say that somebody could possibly be lucky to experience the explosion of a grenade in Vietnam, that somehow that is lucky, just defies all common

sense, all decency, any appreciation for the magnitude of the sacrifice given by any veteran under any circumstances.

She ought to apologize. She ought to be ashamed. How low does political discourse in this country have to go before somebody says ''enough''? How could you possibly say things like this for political gain, recognizing that this isn't just an affront to one soldier but to all soldiers? To minimize sacrifice, and to minimize the extraordinary circumstances of one's life as a result of that sacrifice, is just inexplicable.

I am grateful to the Senator from Rhode Island for his passion, his words, and for the effort he has made tonight to set the record straight.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

ENERGY PACKAGE CONSIDERATION

Mr. FRIST. Mr. President, I want to take a minute to let colleagues known what the Democratic leader and I have discussed with respect to consideration of an energy package.

The Chairman of the Energy Committee has been working hard, along with others, to put together a slimmed-down energy package that addresses some of the concerns that members of the Senate had with the conference report last fall. While there was some interest in addressing energy amendments on the highway bill, the Democratic Leader and I agreed that we will instead consider energy separately from highways.

Under this agreement, I will Rule 14 an energy package and put it before the Senate in an expeditious way. We will consider it as quickly as possible, in a constrained manner, with as few amendments as possible. Senator DASCHLE and I will seek to get an agreement to limit amendments, but if that is not possible, we understand that it my be necessary to file cloture to move the process along. The goal would not be to preclude any Member's right to offer an amendment, but to ensure that the Senate has an opportunity to decide: do we want to consider a slimmed-down energy package, or not?

So, for the information of colleagues, that is how Senator DASCHLE and I have agreed to handle energy issues in the immediate future. I would now yield to the Democratic leader for his comments.

Mr. President, this is indeed how the Majority Leader and I have agreed to proceed with respect to the consideration of an energy package.

I believe this is the most appropriate way to proceed, and I appreciate working with the Majority Leader to reach this understanding.

THE DEFICIT OF DECENCY

Mr. MILLER. The Old Testament prophet, Amos, was a sheep herder who lived back in the Judean hills, away from the larger cities of Bethlehem and Jerusalem. Compared to the intellectual urbanites like Isaiah and Jeremiah, Amos was just an unsophisticated country hick. But Amos had a unique grasp of political and social issues, and his poetic literary skill was among the best of all the prophets.

That familiar quote of Martin Luther King, Jr.:

> Justice will rush down like waters and righteousness like a mighty stream. . . .

Those are Amos's words.

Amos was the first to propose the concept of a universal God and not just some tribal deity. He also wrote that God demanded moral purity, not rituals and sacrifices.

This blunt-speaking moral conscience of his time warns, in Chapter 8, verse 11 of the Book of Amos, as if he were speaking to us today:

> The days will come, sayeth the Lord God, that I will send a famine in the land. Not a famine of bread or of thirst for water, but of hearing the word of the Lord.
>
> And they shall wander from sea to sea and from the north even to the east. They shall run to and fro to seek the word of the Lord, and shall not find it.

''A famine in the land,'' has anyone more accurately described the situation we face in America today? A famine of ''hearing the word of the Lord.'' Some will say Amos was just an Old Testament prophet who lived 700 years before Christ.

That is true. So how about one of the most influential historians of modern times, Arnold Toynbee, who wrote the acclaimed 12-volume ''A Study of History.'' He once declared:

> Of the 22 civilizations that have appeared in history, 19 of them have collapsed when they reached the moral state America is in today.

Toynbee died in 1975, before seeing the worst that was yet to come. Yes, Arnold Toynbee saw the famine, ''the famine of hearing the word of the Lord,'' whether it is removing a display of the Ten Commandments from a courthouse or of a nativity scene from a city square, whether it is eliminating prayer in the city schools or eliminating ''under God'' in the Pledge of Allegiance, whether it is making a mockery of the sacred institution of marriage between a man and a woman, or, yes, telecasting around the world made-in-the-USA filth masquerading as entertainment.

The culture of far left America was displayed in a startling way during the Super Bowl's now infamous half-time show, a show brought to us on behalf of the Value-Les Moonves and the pagan temple of Viacom-Babylon.

I asked the question yesterday: How many of you have ever run over a skunk with your car? I know the President has, somewhere over there around Frog Hollow. I have, many times. I can tell you that the stink stays around for a long time. You can take the car through a carwash and it is still there. So the scent of this event will long linger in the nostrils of America.

I am not talking just about an exposed mammary gland with a pull-tab attached to it. Really, no one should have been too surprised with that. Wouldn't you expect a bumping, humping, trashy routine entitled ''I'm Going To Get You Naked'' to end that way?

Does any responsible adult ever listen to the words of this rap-crap? I would quote you some of it, but the Sergeant at Arms would throw me out of this Chamber, as well he should.

Then there was that prancing, dancing, strutting, rutting guy, evidently suffering from jock itch because he kept yelling and grabbing his crotch. But, then, maybe there is a culture of crotch grabbing in this country I don't know about. But as bad as all that was, the thing that yanked my chain the hardest was seeing this ignoramus with his pointed head stuck up through a hole he had cut in the flag of the United States of America, screaming about having ''a bottle of scotch and watching lots of crotch.''

Think about that. This is the same flag to which we pledge allegiance. This is the same flag that is draped over coffins of dead young uniformed warriors, killed while protecting Kid Crock's boney butt. He should be tarred and feathered and ridden out of this country on a rail. You talk about a good reality show? That would be one.

The desire and will of this Congress to meaningfully do anything about any of these so-called social issues is nonexistent and embarrassingly disgraceful. The American people are waiting and growing impatient with us. They want something done.

I am pleased to be a cosponsor of S.J. Res. 26, along with Senator ALLARD and others, proposing an amendment to the Constitution of the United States relating to marriage; and S. 1558, the Liberties Restoration Act, which declares religious liberty rights in several ways, including the Pledge of Allegiance and the display of the Ten Commandments.

Today, I join Senator SHELBY and others with the Constitution Restoration Act of 2004 that limits the jurisdiction of Federal courts in certain ways.

In doing so, I stand shoulder to shoulder, not only with my Senate cosponsors and Chief Justice Roy Moore of Alabama, but more importantly with our Founding Fathers in the conception of religious liberty and the terribly wrong direction our modern judiciary has taken us.

Everyone today seems to think the U.S. Constitution expressly provides for separation of church and state. I guess you could ask any 10 people if

that is not so and I will bet you most of them will say, well, sure that is so. And some would point out that is in the First Amendment.

Wrong. Read it. It says:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Where is the word ''separate''? Where are the words ''church'' and ''state''? They are not there; never have been, never intended to be. Read the CONGRESSIONAL RECORD during the 4-month period in 1789 when the amendment was being framed in Congress. Clearly their intent was to prohibit a single denomination in exclusion of all others, whether it was anglican or Catholic or some other.

I highly recommend a great book entitled Original Intent by David Barton.

It really gets into how the actual Members of Congress, who drafted the First Amendment, expected basic Biblical principles and values to be present throughout public life and society, not separate from it.

It was Alexander Hamilton who pointed out that ''judges should be bound down by strict rules and precedents, which serve to define and point out their duty.''

''Bound down.'' That is exactly what is needed to be done. There was not a single precedent cited when school prayer was struck down in 1962.

These judges who legislate instead of adjudicate do it without being responsible to one single solitary voter for their actions.

Among the signers of the Declaration of Independence was a brilliant young physician from Pennsylvania named Benjamin Rush.

When Rush was elected to that First Continental Congress, his close friend Benjamin Franklin told him ''We need you . . . we have a great task before us, assigned to us by Providence.''

Today, 228 years later there is still a great task before us assigned to us by Providence. Our Founding Fathers did not shirk their duty and we can do no less.

By the way, Benjamin Rush was once asked a question that has long interested this Senator from Georgia in particular. Dr. Rush was asked, Are you a democrat or an aristocrat? And the good doctor answered, ''I am neither''. ''I am a Christocrat. I believe He, alone, who created and redeemed man is qualified to govern him.''

That reply of Benjamin Rush is just as true today in the year of our Lord 2004 as it was in the year of our Lord 1776.

So, if I am asked why—with all the pressing problems this Nation faces today—why am I pushing these social issues and taking the Senate's valuable time, I will answer: Because, it is of the highest importance. Yes, there is a deficit to be concerned about in this country, a deficit of decency.

So, as the sand empties through my hourglass at warp speed—and with my time running out in this Senate and on this Earth—I feel compelled to speak out for I truly believe that at times like this, silence is not golden. It is yellow.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to compliment the Senator from Georgia, Senator MILLER, for his statement and for his outrage over some of the decline in morality which was evidenced by not only by Super Bowl halftime but also by the Supreme Court decision just made in the State of Massachusetts where basically four individuals tried to legalize same-sex marriage. It was not a vote of the people.

IMMIGRATION REFORM, GUEST WORKERS, AND AGJOBS

Mr. CRAIG. Mr. President, this afternoon the Judiciary Committee's Immigration and Border Security Subcommittee, on which I serve, held an important hearing on immigration and guest worker reform. The hearing focused on broad issues related to temporary guest worker, and especially on the framework for reform proposed recently by the President of the United States. Our chairman, the Senator from Georgia, Mr. CHAMBLISS, also welcomed statements from several Senators who have introduced bills in this area.

Before this President came into office, the Federal Government led the way as our Nation remained in denial, ignoring both the rapidly growing number of undocumented persons in this country and the increasing dependence of critical sectors of our economy on undocumented workers. Some would say, with justification, that the Nation actually spent the last four decades looking the other way.

Then, a real wake-up call came on September 11, 2001, on the need to manage our borders effectively, and of the failure to do so for many years before.

In the last 2½ years, we have made progress. President Bush has demonstrated tireless leadership on and since September 11. The new Department of Homeland Security has been established to bring rationality to our border, immigration, and homeland security efforts. With the hard work of the administration, our men and women in uniform, and the Congress, our borders are more secure and our homeland is safer.

However, a lot of work remains to be done, as recognized at this hearing.

The President has proposed a framework for guest worker reform. I applaud the administration's repeated assurance that it is not taking any position on any one bill and has no intention to preclude any bill. The President has said he wants to work out the details with Congress, and we are ready to work with him.

I also appreciated the opportunity to highlight the fact that one bill already introduced in Congress is ready to move. We have a vehicle ready to road-test key principles in the President's framework. I also believe this bill is consistent with the broad goals and principles of several of our other colleagues who have introduced broad reform bills.

That bill is AgJOBS—the Agricultural Job Opportunity, Benefits, and Security Act, introduced as S. 1645 and HR 3142. The ranking member of the Immigration Subcommittee, the Senator from Massachusetts, Mr. KENNEDY, is the bill's other principal sponsor in the Senate. The principal difference from other bills is that AgJOBS deals with one industry—agriculture.

AgJOBS is a thoroughly-developed product, fitted for the unique needs of agriculture. It represents more than 7 years of work on these issues. It reflects 4 years of tough, bipartisan negotiations. A majority of the Senate are now cosponsors.

This bill gives us the opportunity to use reform in agriculture as the demonstration program that will help us work out the details, anticipate challenges, prevent problems, and fine-tune the mechanics of an economy-wide reform package down the road.

Agriculture also has a unique history of guest worker programs and migrant employment. We have the necessary data and experience to draw on. There is no doubt in the minds of most of us that there really are few American citizens today who want to work, on a seasonal and migrant basis, at the hard physical labor of agriculture. In contrast, in some other industries, there remains the controversy over the availability of willing and qualified domestic workers and concern about their displacement by guest workers.

Agriculture is the industry most impacted by dependence on undocumented workers—not by anyone's design, but by circumstance and necessity. The government's own data—based, incredibly, on self-disclosure by workers, themselves—indicates that more than half of the agricultural work force is undocumented. Responsible private estimates run as high 75 to 85 percent. Farmers are going out of business today because they cannot find legal workers at the times they are needed.

With AgJOBS, we could begin immediately to improve our homeland security—and especially ensure the safety and security of our food supply—by knowing who is planting and harvesting our crops, where they came from, and where they are working.

With AgJOBS, we do not need to wait to start putting an end to the inhumane risks and exploitation suffered by these most vulnerable of workers. Every year, more than 300 persons die in the desert, or in boxcars, or being smuggled in other hazardous transportation. That is not tolerable in a humane society.

AgJOBS takes the same long-term approach consistent with the President's framework and other bills—an

improved guest worker program. It also addresses the need for a transition program in the immediate term, by allowing workers the earned adjustment to legal status. This is not amnesty.

This letter brings together employers and workers—from the American Farm Bureau and the U.S. Chamber of Commerce to the United Farm Workers and the AFL–CIO. Cosigners include the National Association of State Departments of Agriculture, worker and legal-service advocates, large and small employers, Latino groups, religious groups, social service organizations, agriculture and other sectors of the economy, immigration issue advocates, and others. Legislation involving major labor and immigration issues simply does not become law, unless it achieves this kind of bipartisan and broad-based consensus

I continue to invite all my colleagues to become cosponsors of AgJOBS and look forward to working with them to move this bill forward this year.

I ask unanimous consent to print into the RECORD a letter of support that Senator KENNEDY and I have just received from some 420 organizations—national, state, and local organizations—asking Congress to enact AgJOBS into law expeditiously.

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

FEBRUARY 12, 2004.

DEAR MEMBER OF CONGRESS: The undersigned organizations representing a broad cross-section of America join together to support enactment of S. 1645 and H.R. 3142, the Agricultural Job, Opportunity, Benefits and Security Act (AgJOBS). This landmark bipartisan legislation would achieve historic reforms to our nation's labor and immigration laws as they pertain to agriculture. The legislation reflects years of negotiations on complex and contentious issues among employer and worker representatives, and leaders in Congress.

A growing number of our leaders in Congress, as well as the President, recognize that our nation's immigration policy is flawed and that, from virtually every perspective, the status quo is untenable. Nowhere is the status quo more untenable than in agriculture. America needs reforms that are compassionate, realistic and economically sensible—reforms that also enhance the rule of law and contribute to national security. AgJOBs represents the coming together of historic adversaries in a rare opportunity to achieve reforms supportive of these goals, as well as our nation's agricultural productivity and food security.

AgJOBS represents a balanced solution for American agriculture, a critical element of a comprehensive solution, and one that can be enacted now with board bipartisan support. For these reasons, we join together to encourage the Congress to enact S. 1645 and H.R. 3142, the Agricultural Job Opportunity, Benefits, and Security Act of 2003, before the 2004 Congressional April Recess.

Sincerely,

Agriculture Coalition for Immigration Reform; American Farm Bureau Federation; National Council of Agricultural Employers, AFL–CIO; U.S. Chamber of Commerce; U.S. Hispanic Chamber of Commerce; National Council of La Raza (NCLR); Mexican American Legal Defense and Education Fund (MALDEF); League of United Latin American Citizens (LULAC); William C. Velasquez Institute; United Farm Workers (UFW); National Cattlemen's Beef Association; National Association of State Departments of Agriculture; Catholic Charities USA; The Episcopal Church, USA; Farmworker Justice Fund (FJF); American Nursery & Landscape Association; Association of Farmworker Opportunity Programs (AFOP); National Migrant and Seasonal Head Start Association; Gulf Citrus Growers Association; Gulf Harvesting, Inc.; Labor Council for Latin American Advancement (LCLAA); Leadership Conference on Civil Rights (LCCR); Moark LLC; Turfgrass Producers International; Society of American Florists; MAFO; Monrovia Growers (CA, OR, GA, NC); National Asian Pacific American Legal Consortium (NAPALC); National Employment Law Project; Arab American Institute (AAI); National Farm Worker Ministry; National Korean American Service & Education Consortium (NAKASEC); Northeast Farm Credit Regional Council;

OFA—An Association of Floriculture Professionals; Pan American Recruiting; Northwoods Agri Women; Salvadoran American National Network; People for the American Way; Perennial Plant Association; Polish American Congress; Pacific Egg and Poultry Association; Southern Nursery Association; Together in America; Western Carolinas Horticultural Alliance; Yankee Farm Credit; Telamon Corporation; Southern Poverty Law Center; Catholic Migrant Farmworker Network; Housing Assistance Council; Alabama Nursery & Landscape Association; Amanecer (AZ); Arizona Nursery Association; Arkansas Green Industry Association;

Allied Grape Growers (CA); Almond Hullers and Processors (CA); California Association of Nurseries and Garden Centers; California Association of Winegrape Growers; Catholic Charities of the Diocese of Santa Rosa (CA); California Apple Commission; California Association of Winegrape Growers; Birds Eye Foods; Deere & Company;

Tyson Foods Inc.; Union of Needletrades, Industrial and Textile Employees (UNITE); United Egg Producers; National Christmas Tree Association; United Food and Commercial Workers Union (UFCW); United Fresh Fruit & Vegetable Association; U.S. Apple Association; U.S. Custom Harvesters, Inc.; Western Growers Association; Western Range Association; Western United Dairymen, Essential Worker Immigration Coalition; Services Employees International Union (SEIU); A. Duda & Sons; Evangelical Lutheran Church in America; American Horse Council; General Board of Church and Society, the United Methodist Church; Agricultural Affiliates; Agri-Placements International; Al French, Former USDA Director of Ag Labor Relations;

National Immigration Forum; National Potato Council; New England Apple Council; Cobank; First Pioneer Farm credit; Farm Labor Organizing Committee, AFL–CIO (FLOC); National Association of Elected and Appointed Latino Officials (NALEO); American Immigration Lawyers Association (AILA); National Chicken Council; National Council of Churches; National Milk Producers Federation; South East Dairy Farmers Association; North East Dairy Producers Association; Northwest Horticultural Council; Wineamerica, the National Association of American Wineries; Winegrape Growers of America; American Jewish Committee (AJA); American Mushroom Institute; Campaign for Labor Rights; Cooperative Producers, Inc.;

Cooperative Three, Inc.; Council of Northeast Farmer Cooperatives; Dairylea Cooperative; American Frozen Food Institute;

cil; California Farm Bureau Federation; California Grain and Feed Association; California Grape & Tree Fruit League; California Institute for Rural Studies; California Landscape Contractors Association, Inc.; California Rural Legal Assistance Foundation (CRLAF); California Seed Association; California Strawberry Commission; California Women for Agriculture; Catholic Charities, San Diego; Central American Resource Center (CA); La Clinica de la Raza (CA);

Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA); Franciscan Friars of St. Barbara Province (CA); Harry Singh & Sons (CA); Imperial Valley Vegetable Growers Association; John Harris Farms Inc. (CA); Korean Resource Center, Los Angeles; Lassen Canyon Nursery, Inc. (CA); Los Angeles Coalition to End Hunger & Homelessness; Marin Interfaith Task Force for the Americas; NiSEI Farmers League (CA); Northern California Growers Association; Nursery Growers of Southern California; Our Lady of Victory Missionary Sisters (CA); Raisin Bargaining Association (CA); Ventura County (CA) Farm Bureau; Southern California Ecumenical Council; United Food and Commercial Workers Union (UFCW) Local 1442 (CA); Universal Immigration Service (CA); Colorado Nursery Association;

Colorado Sugar Beet Growers Association; Estes Valley Multicultural Connections (CO); Northern Colorado Onion Association; Sisters of Loretto (CO); Connecticut Farm Bureau; Connecticut Nursery & Landscape Association; Connleaf, Inc. (CT); H.F. Brown Inc. (CT); The Lyman Farm, Inc. (CT); Delaware Nursery & Landscape Association; Latin American Community Center (DE); Latin American Youth Center (DC); Migrant Legal Action Program (DC); Big Cypress Housing Corporation (FL); Centro Campesino (FL); Carlos Rosario Int'l Career Center and Public Charter School; Caribbean Immigrant Services Inc. (FL); Catholic Charities of Orlando, Inc.; Coalition of Florida Farmworker Organizations; Everglades Community Association, Inc.;

Everglades Hammock, Incorporated; Fair Food America (FL); Farmworker Association of Florida, Inc.; Farmworkers Self-Help (FL); The Fellsmere Community Enrichment Program (FL); Florida Catholic Conference; Florida Citrus Mutual; Florida Citrus Packers, Inc.; Florida Farm Bureau Federation; Florida Immigrant Advocacy Center; Florida Impact; Florida Fruit and Vegetable Association; Florida Nurserymen & Growers Association; Florida Strawberry Growers Association; Fundacion Salvadorena de la Florida; Guatemalan Unity Information Center (FL); Immokalee Multicultural Multipurpose Community Action Agency, Inc. (FL); Indian River Citrus League (FL); Legal Aid Service of Broward County, Inc. (FL); Live Oak Villas, LLC (FL);

Little Manatee Housing Corporation (FL); Migrant Farmworker Justice Project, Florida Legal Services, Inc.; Mujer (FL); Pinellas Support Committee (FL); Ranch One Cooperative, Inc. (FL); Redlands Christian Migrant

Association (FL); Retail Systems Consulting (FL); Sarasota/Manatee Farmworker Supporters; Sisters of the Humility of Mary—Indian River (FL); Skinner Nurseries (FL); Sugar Cane Growers Co-op of Florida; Unite for Dignity, Inc. (FL); Center for Pan Asian Community Services (GA); Georgia Green Industry Association; Georgia Rural Urban Summit; Idaho Commission on Hispanic Affairs; Idaho Community Action Network; Idaho Farm bureau; Idaho Food Producers; Idaho Grain Producers Association;

Idaho Migrant Council; Idaho Nursery & Landscape Association; Potato Growers of Idaho; Snake River Farmers Association (ID/MT); Centro Romero (IL); Chicago Jobs With Justice; Conguate (IL); Disciples Justice Action Network (Disciples of Christ) (IL); Heartland Alliance for Human Needs & Human Rights (IL); Hispanic Lawyer's Association of Illinois; Illinois Coalition for Immigrant and Refugee Rights; Illinois Landscape Contractors Association; Illinois Migrant Council; Illinois Nurserymen's Association; Immigration Project (IL); Instituto Del Progreso Latino (IL); Korean American Resource & Cultural Center (KRCC), Chicago; Law Office of Shirley Sadjadi (IL); Law Office of Douglas W. Worrell, Chtd. (IL); The Midwest Immigrant & Human Rights Center (IL);

Project Irene (IL); The Resurrection Project in Chicago; Central Indiana Jobs With Justice; Indiana Nursery & Landscape Association; Immigration Outreach Office, Catholic Charities/Archdiocese of Dubuque; Immigrant Rights Network of Iowa and Nebraska; Iowa Nursery & Landscape Association; Iowa Project; Sisters of Charity (IA); El Centro, Inc.—Kansas; Kansas Farm Bureau; Kansas Nursery & Landscape Association; Kentucky Nursery & Landscape Association; Catholic Charities Archdiocese of New Orleans; Farm Credit of Maine; Maine Nursery & Landscape Association; Angelica Nurseries (MD); Bell Nursery (MD); CASA of Maryland;

Centro de la Comunidad, Inc. (MD); John Shorb Landscaping, Inc. (MD); Maryland Aquatic Nurseries, Inc.; Maryland Nursery & Landscape Association; Migrant and Refugee Cultural Support, Inc. (MIRECS) (MD); Quinn's Kingsville Farms (MD); Robin Hill Farm Nursery (MD); Speakman Nurseries, Inc. (MD); Centro Presente (MA); Irish Immigration Center (MA); Massachusetts Farm Bureau; Massachusetts Immigrant and Refugee Advocacy Coalition; Massachusetts Nursery & Landscape Association; Eastern Michigan University's Bilingual Bicultural Education; Teacher Training Program; Michigan Farm Bureau; Michigan Migrant Legal Assistance Project; Michigan Nursery & Landscape Association; Leitz Farms LLC (MI); Zelenka Nursery, LLC (MI);

Jewish Community Action (MN); Minnesota Nursery & Landscape Association; St. Joseph The Worker Church (MN); Centro San Martin Deporres (MS); Mississippi Immigrant Rights Alliance (MIRA!); Office of Hispanic Ministry, Catholic Diocese of Jackson (MS); Rich Smith, Pastor of St. Ann Catholic Church, Paulding (MS); The Social Concerns Committee of the Catholic Community of St. Francis of Assisi (MS); Daughters of Charity in St. Louis (MO); Human Rights Action Service, St. Louis (MO); Latin American Action Team, Giddings-Lovejoy Presbytery (MO); Mission Effectiveness, School Sisters of Notre Dame, St. Louis; Missouri Nursery & Landscape Association; Montana Nursery & Landscape Association; Nebraska Appleseed Center for Law in the Public Interest; Nebraska Nursery & Landscape Association; Culinary Workers Union, Local 226—Nevada; Nevada Landscape Association; Comite de Apoyo a Los Trabajadores Agricolos (NJ);

Irrigation Association of New Jersey; Mexican American Association of Southern New Jersey; Migration and Refugee Services Diocese of Trenton; New Jersey Farm Bureau Federation; New Jersey Immigration Policy Network, Inc.; New Jersey Nursery & Landscape Association; Rural Housing Incorporated (NM); Brennan Center for Justice at New York University School of Law; Cabrini Immigrant Services (NY); Cayuga Marketing, LLC (NY); Centro Hispano Cuzcatlan (NY); Centro Independiente de Trabajadors Agricolos (CITA)—(NY); Centro Salvadoreno, Inc. (NY); Christian Brothers (NY); mission on Peace and Justice of the Roman Catholic Diocese of Albany, NY; Empire State Council of Agricultural Organizations (NY); Farm Credit of Western New York; Farmworkers Legal Services of New York; Lake Placid Groves LLC (NY); New York Association for New Americans; New York Farm Bureau; New York State Horticultural Society;

New York State Apple Growers Association; New York State Cherry Growers Association; New York State Nursery & Landscape Association; New York State Vegetable Growers Association; PRO–FAC Cooperative (NY); Public Policy Committee, Roman Catholic Diocese of Rochester, NY; Rural and Migrant Ministry (NY); Torrey Farms (NY); Willet Dairy (NY); Workplace Project (NY); YKASEC—Empowering the Korean American Community (NY); El Pueblo, Inc. (NC); Episcopal Farmworkers Ministry (NC); High County Amigos Inc. (NC); Immaculate Concepcion Church (NC); Latino Community Credit Union (NC); Nash Produce Company, Inc. (NC); North Carolina Association of Nurserymen; North Carolina Farm Bureau; North Carolina Justice and Community Development Center;

North Carolina Landscape Association; Student Action With Farmworkers (NC); Triangle Friends of the United Farmworkers (NC); Vitalink (NC); Zelenka Nursery, LLC, (NC); Advocates for Basic Legal Equality (OH); En Camino, Migrant and Immigrant Outreach, Diocese of Toledo; High Stakes Farms (OH); Immigrant Worker Project (OH); Northern Ohio Growers Association; Office of Hispanic Ministry, Catholic Diocese of Cleveland; Ohio Farm Bureau Federation, Inc.; Ohio Fruit Growers Society; Ohio Landscapers Association; Ohio Nursery & Landscape Association; Ohio Vegetable & Potato Growers Association; United Church of Christ Justice and Witness Ministries (OH); Vlasic Pickle Growers (OH); Asian American Community Service Association, Inc.; Oklahoma Nursery & Landscape Association;

Venezuelan American Association of Oklahoma; CASA of Oregon; Farmworker Housing Development Corporation (OR); Hood River Grower-Shipper Association (OR); Northwest Workers' Justice Project (OR); Oregon Association of Nurseries; Oregon Farm Bureau; Oregon Farm Worker Ministry; Oregon Law Center; Pineros y Campesinos Unidos del Noroeste (PCUN), Oregon; El Vista Orchards (Wexford, PA); Five Forks Fruit (Waynesboro, PA); Friends of Farmworkers (PA); Hollabaugh Brothers, Inc. (Biglerville, PA); Pennsylvania Farm Bureau; Pennsylvania Immigration and Citizenship Coalition; Pennsylvania Landscape & Nursery Association; Peter Orchards (Gardners, PA); Sisters of the Humility of Mary—Villa Maria, Pennsylvania—(Sister Ruth Mary Powers); State Horticultural Association of Pennsylvania;

Feinstein Center for Citizenship & Immigration Services (RI); Rhode Island Nursery & Landscape Assn, Inc.; South Carolina Greenhouse Growers Association; South Carolina Nursery & Landscape Association; South Carolina Upstate Tree Growers Association; Catholic Hispanic Ministry, Diocese of Knoxville (TN); Mid-South Interfaith Network for Economic Justice (TN); Tennessee Immigrant and Refugee Rights Coalition; Tennessee Nursery & Landscape Association; Centro de Salud Familiar le Fe (TX); Ellison's (TX); El Paso Central Labor Union; Equal Justice Center (TX); Houston Community Services; Jovenes Immigrantes por un Futuro Mejor (TX); Midland Community Development Corp. (TX); Migrant Clinicians Network, Inc. (TX); Rio Grande Valley Sugar Growers, Inc. (TX); Texas Agricultural Cooperative Council; Texas Nursery & Landscape Association;

Texas Poultry Federation; Texas Egg Council; Texas Broiler Council; Texas Poultry Improvement Association; Texas Produce Association; Texas Seed Trade Association; Texas State Florist's Association; Texas Turkey Federation; Texas Vegetable Association; Turfgrass Producers of Texas; Utah Farm Bureau; Utah Nursery & Landscape Association; Catholic Diocese of Richmond, Virginia; Hampton Roads Coalition for Workers' Justice; Hispanic Committee of Virginia; Refugee and Immigration Services, Catholic Diocese of Richmond; Southwest Virginia Nursery and Landscape Association; Virginia Green Industry Council; Virginia Council of Churches; Virginia Justice Center for Farm and Immigrant Workers;

Virginia Nursery & Landscape Association; El Centro de la Raza (WA); Grupo Mexico of Washington State; Lutheran Public Policy Office of Washington State; Marsing Agricultural Labor Sponsor Committee (WA); Underwood Fruit and Warehouse Company (WA); Washington Association of Churches (WA); Washington Growers Clearing House Association; Washington Growers League; Washington Potato & Onion Association; Washington State Commission on Hispanic Affairs; Washington State Nursery & Landscape Association; Washington Sustainable Food & Farming Network; Commercial Flower Growers of Wisconsin; Gardens Beautiful Garden Centers (WI); Grounds Management Association of Wisconsin; Northern Christmas Tree Growers & Nursery (WI); Office of International Student Services, University of Wisconsin–Platteville; South Central Federation of Labor, AFL–CIO (WI); UMOS (WI);

Wisconsin Council of Churches; Wisconsin Landscape Contractors Association; Wisconsin Landscape Federation;

Wisconsin Nursery Association; Wisconsin Sod Producers; Ivan Kohar Parra, Executive Director, Latino Community Development Center.

TRIBUTE TO ARTHUR JERRY PONTIUS

Mr. DASCHLE. Mr. President, I would like to take this opportunity to recognize Mr. Arthur Jerry Pontius of Deadwood, SD, with a Congressional Fire Caucus Certificate of Award. Jerry has served the Deadwood Volunteer Fire Department for over 40 years, and has been an exemplary citizen through his selflessness and dedication to community safety and well-being. I am pleased and honored to say that this award could not go to a more qualified or deserving person.

Jerry graduated second in his class from the Deadwood Public High School system in 1957, and went on to earn a B.S. in mechanical engineering from the South Dakota School of Mines and Technology. After working for Pratt & Whitney Aircraft, Jerry came home to Deadwood, where he eventually became the mechanical engineer for the Homestake Mining Company. He stayed with Homestake for 25 years, serving in various capacities, most recently as the chief plant engineer. He left Homestake in 1990 and retired in 1998.

Over the years, despite his busy work life, Jerry has found time to serve his country and his community in countless ways. He first joined the Deadwood Volunteer Fire Department in 1963, and has been an integral part of the department ever since. In addition to serving in various positions within the department, including fire chief, certified instructor, and member of the Board of Trustees, Jerry has served as the president of the South Dakota Firemen's Association and on the Governor's Commission on Fire Service Training. During his tenure as president of the South Dakota Fireman's Association, the bylaws were changed to admit women, representing the best of American values of social equality. Most recently, Jerry received the ''Outstanding Service Award for Service as assistant chief during the Grizzly Gulch Fire'' in 2002.

It is hard to imagine someone doing more for his or her community's safety during their lifetime. As are so many South Dakotans, I am thankful for Jerry's commitment and work to ensure that not only the community of Deadwood, but all South Dakota communities are safe and secure from fires. It is only fitting that Jerry receive this award, as tribute to his incredible contributions to fire safety efforts in South Dakota.

SCHOOL VIOLENCE AND COPS FUNDING

Mr. LEVIN. Mr. President, 2 weeks ago a 17-year-old student was shot and killed at Ballou High School in Washington, DC. This shooting was the second in a 4-month period at the school. Earlier this week, in Albany, NY, another school shooting took place, and while only minor injuries resulted, the incident is another example of the impact of gun violence on students.

School violence, or even the threat of school violence, instills fear in our students, and limits their ability to learn. It also threatens and intimidates teachers and makes instruction more difficult. Violence in our schools puts the learning environment in jeopardy.

That is one reason why I am troubled by President Bush's fiscal year 2005 budget. The President's budget proposes a total elimination of funding for the COPS in Schools Program. As my colleagues know, the COPS in Schools program is designed to help law enforcement agencies hire school resource officers to engage in community policing in and around primary and secondary schools. COPS in Schools provides an incentive for law enforcement agencies to build collaborative partnerships with the school community and to use community policing efforts to combat school violence.

Since 1994, in my home State of Michigan, police departments have received more than $210 million, hired more than 3,300 officers, and the COPS in Schools program has added 143 school resource officers, but with the President's cuts to the COPS program, additional Federal assistance would not be on the way. The President's $900 million in cuts to COPS funding would require local police departments around the country to stretch even further the limited number of dollars they have to protect our schools and communities.

I urge my colleagues to support efforts to reinstate COPS funding so that we might ensure a safer environment for our children to learn.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

One such crime occurred in Santa Rosa, CA, on September 20, 1999. Four youths allegedly fired shots from a pellet gun toward a woman whose car had gay pride, diversity, and rainbow stickers on it. The youths also allegedly yelled derogatory comments regarding the woman's sexual orientation.

The first duty of Government is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

THE JOBS FOR AMERICA ACT

Mr. KENNEDY. Mr. President, millions of Americans have seen corporations move their jobs overseas. Americans are losing jobs in every sector of our economy—not only in manufacturing, but also in computer technology, the service sector, and health care. Positions like call center technician, information technology specialist, and even health care worker are evaporating at an amazing clip.

Experts estimate that 40 percent of Fortune 1000 companies are currently using some form of overseas outsourcing. As many as 3.3 million jobs may be offshored in the next 15 years, causing American workers to lose $136 billion in wages. Worst of all, we are losing jobs in sectors that once provided our economy with its greatest growth like the information technology sector. As many as 500,000 information technology jobs could go overseas in coming years.

The tragedy of our disappearing jobs is about more than just numbers. This week, a Wisconsin auto parts manufacturer announced that it was moving 500 jobs overseas, putting an equivalent number of workers out on the street. IBM has announced plans to displace thousands of computer programmers by moving their work to other countries. These workers represent the human cost of offshore outsourcing.

This cost—all too real for most Americans—is ignored by the Bush administration, whose chief economic advisor stated this week that outsourcing is ''a plus for the economy in the long run.''

Tell that to the 15 million Americans who are out of work today. Tell that to the millions more who had to settle for new jobs at lower pay. Tell that to the millions of Americans struggling every day to provide for their families, pay the bills, and cope with rising health care and college costs.

What we are seeing is a President out of touch with the needs of working Americans. He thinks it is good to deny overtime pay to workers. He opposes an increase in the minimum wage. He opposes unemployment coverage for workers looking for new jobs. And now he wants to ship your jobs overseas.

Exporting American jobs may help the bottom line on Wall Street, but it hurts the bottom lines of America's families.

Today, we are saying enough is enough. If President Bush and his corporate pals want to send your job overseas, then they will be held accountable.

The Jobs for America Act amends the Worker Adjustment and Retraining Notification, WARN, Act to require companies to report whenever they lay off workers to send jobs overseas. When company plans to lay off workers and send those jobs overseas, they need to tell workers in advance. And they need to inform the Department of Labor, and local government officials. They

will have to tell the public how many jobs are affected, where the jobs are going, and why they are being offshored.

This act also requires the Department of Labor to compile much-needed statistics of offshored jobs and report them on an annual basis to the Congress and the public. Finally, it applies WARN Act protections to all cases where 50 or more workers are laid off.

The bill shines a spotlight on offshoring practices—not only in corporate boardrooms but at the White House. It is time for President Bush and Corporate America to let every American know whether they stand only for more profits or whether they stand with the American people.

Mrs. FEINSTEIN. Mr. President, I rise to join my colleagues, Senator SNOWE and Senator WYDEN, to support the bipartisan Medicare Enhancement for Needed Drugs Act. This legislation is an important step toward controlling the spiraling cost of prescription drugs for America's seniors.

Last November, I voted in favor of the Medicare Prescription Drug Improvement and Modernization Act because I believed it was the right step toward finally delivering on a promise Congress made to its seniors to modernize Medicare by providing prescription drug coverage in the nearly 40-year-old program.

I personally ran the numbers and looked at a variety of options to add a prescription drug benefit in Medicare, but I decided to support the final bill that was passed last November and signed into law in December because I felt it would make a genuine, positive difference for the seniors in my State, particularly those with low incomes or very high drug bills.

The key to the Medicare bill is that the prescription drug coverage is voluntary. No senior will be forced to enroll in drug coverage in Medicare, also called Medicare Part D. Those who do will receive assistance from the Federal Government for their drug bills up to $2,250 in total drug costs and will only pay 5 percent of their drug costs above $3,600 in out-of-pocket spending.

I have said several times on the floor of the Senate that I was dismayed at a provision in the bill that prohibits the Secretary of Health and Human Services from negotiating lower prescription drug prices. Similarly, I said that I would take action to remove this provision and work toward lowering costs of the program.

I feel strongly that savings to the Medicare Program can be achieved by provisions in the Medicare Enhancement for Needed Drugs Act. Now is the time to find solutions that reduce the cost of prescription drugs for our Nation's seniors and for the future of Medicare. I know seniors in my State who have had to make the terrible choice of paying for their prescription drugs and paying for rent and groceries. In the end, many skip or reduce their dosages putting their health at risk. That is simply unacceptable.

This bill represents a comprehensive approach to strengthening the drug coverage in the Medicare bill by addressing the skyrocketing drug costs.

First and foremost, the bill strikes language in the Medicare bill called the ''noninterference'' provision. That section bars the HHS Secretary from interfering with the negotiations between drug manufacturers and pharmacies and sponsors of prescription drug plans. I strongly believe that the Secretary should be given the authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs.

CBO estimates that the effect of striking the ''noninterference'' provision would have a ''negligible effect'' on Federal spending because the savings CBO predicts private plans will be able to obtain will be greater than what the Secretary will be able to achieve.

However, what if CBO's predictions are not the reality and private plans cannot achieve the lowest prices available? What if competition among private plans does not bring about greater cost savings? In that scenario, the HHS Secretary would not be able to step in and use the full force of the Federal Government's bulk purchasing power to lower prescription drug prices.

A 2001 inspector general's report from the Department of Health and Human Services found that the Department of Veterans' Affairs, VA, paid an average of 52 percent less for a list of two dozen drugs than did Medicare. The VA employs a number of cost-saving techniques such as using generics whenever available and substituting high-priced medications with just as effective ones for lower prices.

I strongly believe that the Federal Government should employ the cost-saving techniques for Medicare as the VA does for the acquisition of prescription drugs.

As an incentive to participating Medicare drug plans to negotiate the lowest possible drug prices, the bill allocates $500 million from the Medicare Stabilization Fund to be used by the HHS Secretary for those plans to secure negotiated prices that are on average within 10 percent of VA or Department of Defense.

In order to ensure that seniors can make an ''apples to apples'' comparison when determining which drug plan suits them best, the bill requires that the Centers for Medicare and Medicaid Services, CMS, determine the negotiated savings received from each plan.

The bill makes a significant step toward increasing access to lower cost reimported prescription drugs by ensuring access to these markets. It prohibits any company that discriminates publicly, privately or otherwise against foreign retailers or wholesalers who pass along discounts to consumers living in the United States from taking advantage of the advertising deduction allowed under the U.S. Tax Code. The purpose of this provision is to stop the practice of drug manufacturers limiting their shipments to foreign countries expressly to prevent reimportation by American consumers.

I have heard concerns raised by many of my constituents about the impact the Medicare bill will have on their medigap plans. This bill directs the HHS Secretary to work with the National Association of Insurance Commissioners to conduct a review of the changes to the medigap policies in the new drug benefit for the purpose of evaluate its impact on Medicare beneficiaries.

CBO projects that Americans over 65 will spend $1.8 trillion on prescription drugs over the next 10 years. Recent studies of United States and Canadian drug price comparisons show that, on average, prices charged by manufacturers, wholesalers, and retailers were higher in the United States, most recently by about 70 percent.

If we do not address the exorbitant costs of prescription drugs in this country today, we threaten the viability of programs like Medicare for future generations. I am pleased to join Senators SNOWE and WYDEN in the fight for lower prescription drug prices for our seniors.

I urge my colleagues to join me in supporting this important legislation.

INFANT MORTALITY RATE INCREASES FOR THE FIRST TIME SINCE 1958

• Mr. BOND. Mr. President, I rise to today to discuss some disturbing news. According to a preliminary report released by the CDC's National Center for Health Statistics, infant mortality in the U.S. increased from 6.8 deaths per 1,000 live births in 2001 to a rate of 7.0 in 2002. This is the first time that the infant mortality rate has increased since 1958. Birth defects, preterm birth and low birthweight, and maternal complications of pregnancy were the major factors contributing to this increase.

During the last session of Congress we passed legislation that I introduced with Senator DODD to renew the Federal commitment to finding the causes of birth defects and preventing those for which we know the causes. I am very proud of the important work being conducted by the National Center on Birth Defects and Developmental Disabilities at the CDC in this area.

Congress has not yet addressed the problem of premature birth and low birthweight. In 2002, more than 480,000 babies were born prematurely in the U.S 1 in 8 births. In my own State of Missouri, 12.7 percent of births are preterm, an increase of more than 11 percent over the last decade. Preterm labor can happen to any pregnant woman and the causes of nearly half of all preterm births are unknown.

In January of 2003, the March of Dimes launched a 5-year, $75 million

campaign to prevent preterm birth. Also supporting the campaign are the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the Association of Women's Health, Obstetric and Neonatal Nurses and 28 other national organizations. I cannot think of a better group of organizations to take on this serious public health problem. As significant as the March of Dimes campaign will be, success in reducing the incidence of prematurity requires a commitment from the Federal Government as well.

I am pleased to be a cosponsor of vital legislation aimed at reducing the rates of preterm birth. The ''PREEMIE Act'' authorizes expansion of research into the causes and prevention of prematurity and increases Federal support of public and health professional education as well as support services related to prematurity.

I would like to conclude by telling you the story of Jacqueline Reineri. Born 4 months premature, at just 24 weeks gestation, Jacqueline was given a very slim chance for survival. She was the size of a small doll, weighing just 1 lb., 10 ounces. Jacqueline had a grade-three brain bleed among many other complications and spent 96 days in the neonatal intensive care unit, NICU.

Today, Jacqueline has Spastic Quadriplegia Cerebral Palsy and gets around in a power wheelchair. She has endured four major surgeries and will continue to experience many long-term effects of prematurity. While her family worries about her future, they feel blessed that she is a very intelligent second grader in a typical classroom and a very active advocate for prematurity and children with special needs, serving as the Missouri March of Dimes Ambassador.

As inspiring as Jacqueline's story is many premature babies aren't as lucky. The recent increase in the rate of infant mortality underscores the importance of a comprehensive public-private effort to find the causes and ultimately prevent premature birth.

I ask all of my colleagues to join me today in pledging to do all we can to ensure a day when all children are born healthy.●

RADIO LIBERTY STIFLED IN UKRAINE

Mr. CAMPBELL. Mr. President, several weeks ago, I addressed the Senate, in my capacity as Co-Chairman of the Helsinki Commission, on critical Presidential elections scheduled to be held later this year in Ukraine. In the latest twist in the lead up to those elections, yesterday Radio Liberty was abruptly informed that its Ukrainian Service programming would be removed from its major radio rebroadcaster's FM schedule, beginning February 17. In a press release, RFE/RL President Tom Dine said, ''This is a political act against liberal democracy, against free speech and press, against RFE/RL, and shows, once again, that Ukraine's political leadership is unable to live in an open society and is compelled to 'control' the media as if it were the good old days of the Soviet Union.''

This is not the first time that there has been official Ukrainian pressure to drop RFE/RL broadcasting since September 2001, shortly after the murder of independent journalist Heorhiy Gongadze and the release of secretly-recorded tapes in Ukrainian President Kuchma's office implicating him and other high-ranking officials in the disappearance, corruption, and other dubious actions. Radio Liberty covers these and many issues about life in Ukraine, serving as an objective source of information in a media environment increasingly dominated by these authorities.

In the past I have spoken out about Ukraine's troubled pre-election environment, including its media environment. This latest move, together with repressive measures against the democratic opposition and independent media over the course of the last few months, raise profound questions as to whether the October presidential elections will be free, fair, open, and transparent, in a manner consistent with Ukraine's freely undertaken OSCE and other international commitments. Effectively unplugging an important independent source of information does not bode well for democracy in Ukraine.

EXPORT-IMPORT BANK

Mr. SHELBY. Mr. President, I acknowledge today, February 12, as the seventieth anniversary of the Export-Import Bank, the principal export credit agency of the United States. Since 1934, the bank has played a unique role in helping to facilitate U.S. exports, ultimately supporting thousands of jobs. As an independent U.S. Government agency, it assumes credit and country risks that the private sector is unable or unwilling to accept.

Eximbank has assisted in financing more than $400 billion in U.S. exports. On average, 85 percent of its transactions directly benefit small businesses which are clearly struggling in today's economy. Historically, the Bank has a loan-loss rate of under 2 percent, which is a respectable record for any financial institution.

As the United States has become economically interdependent with a growing number of foreign trade partners, the Bank's role in leveling the playing field for American companies seeking to market their goods and services overseas continues to grow. In turn, Eximbank plays a vital part in enabling U.S. companies, both large and small, to turn export opportunities into concrete sales.

Mr. President, I am pleased to make not of Eximbank's important contribution to the U.S. economy and hope the institution continues to honor its mission through the twenty first century.

IN MEMORY OF MILTON WESLEY SANDERS

Mr. REID. Mr. President, Milton Wesley Sanders passed away on Tuesday, February 10, in Washington, DC. He was one of the rapidly vanishing members of what we rightfully call the ''greatest generation''.

These valiant Americans who fought in World War II did not merely defeat a savage and evil enemy. They literally saved the free world. What would our own lives have been like if the forces of Nazism had prevailed in that war? It is truly unthinkable, and thanks to the greatest generation and men like Milton Sanders, we will never have to know the answer.

This generation of Americans grew up during the Great Depression, so they already knew about sacrifice. And when their country called upon them to sacrifice even more, they did not hesitate.

Milt Sanders' first heroic act occurred when he was still in flight school in Florida. During a training flight near Tallahassee, FL, his new P–47 aircraft malfunctioned because of a missing part.

Rather than bail out over a populated area, he decided to take the airplane in for a ''safe'' crash landing. He could have landed safely on the campus of the Florida State College for Women now known as Florida State. But when he saw a lot of students walking across campus, he headed for a nearby field.

In the instant before landing he had to divert the aircraft to avoid hitting a farmer. In the resulting crash, he suffered a skull fracture and numerous other injuries. But his quick thinking and courage had saved innocent lives.

During the war, Milt flew 116 combat P–47 fighter-bomber missions with the 9th Air Force in the European theater of operations. He supported operations from the pre-Normandy invasion build-up through the race across France, the Battle of the Bulge, and the final victory over Nazi tyranny. He brought back seven aircraft so badly shot up that they were immediately sent to the scrap heap. He was credited with shooting down one German aircraft and destroying more than 25 aircraft on the ground. For his valor, Milt was awarded two Distinguished Flying Crosses, 20 Air Medals, two Presidential Unit citations, the French Croix de Guerre with Silver Star, and the Belgian Fourragere.

Milt, who was known to some of his squadron buddies as ''Sandy,'' experienced the heroism of war, and he also saw the horror.

He saw one friend's aircraft crash into the ground. He saw another man bail out only to be knocked unconscious when he collided with his airplane. That man's parachute never opened.

He saw dead bodies that were booby-trapped.

He befriended an English family in London, only to find when he went to visit them that their home had been destroyed by a German V1 rocket.

Milt and his comrades knew the dangers they faced. After flying a mission at night, he would later recall that ground fire is frightening during the day, ''but to see it at night at a low altitude, you think every shot coming up has your name on it.''

Yet despite the dangers, he fought without fear.

After World War II, Milt continued to serve in the U.S. Air Force Reserve, rising to the rank of lieutenant colonel and retiring with 20 years of honorable service in 1962.

Even when his active duty service had ended, he continued to serve our country through his work with several firms providing weapons systems and equipment to the Department of Defense. This association continued until his civilian retirement in 1989 at the age of 72.

The measure of a man's life is not solely in what he did, but in what he did for others. Throughout his life, Milton Sanders constantly sacrificed his time and talents in service to others in his church, his community, and his Nation. Every person who came into contact with him knew he was a friend they could always count on, no matter the hour, no matter the need.

Perhaps Milt's greatest contribution to our Nation comes from the legacy of his 46 years of loving marriage to his wife Jean. They have eight children, including two graduates of our military service academies; 28 grandchildren; and 17 great-grandchildren.

I will always treasure the memories of my monthly home teaching visits to the Sanders home. His piano playing, story-telling and beautiful prayers will always be vividly present in my mind. Jean, I learned during these visits, has always been the foundation of their wonderful relationship.

Like so many other members of his generation, Milton Sanders was a great yet humble patriot. Because of the sacrifices they made, our lives are immeasurably better than they otherwise might have been. Our Nation owes them more than words can ever convey.

HOMAGE TO BILL AND TERI POPP

Mr. COLEMAN. Mr. President, today I pay homage to Minnesotans who are helping the Minnesota National Guard and their families. The National Guard serves our country and the States as a unique organization among all branches of the United States Armed Forces. The Guard is America's community-based defense force, located in more than 2,700 cities and towns across the Nation. Sixty-two of those cities are located in Minnesota. National Guard members are citizen-soldiers and airmen who are integral members of their communities. Minnesota National Guard members live, shop, work, worship, and go to school in Minnesota's cities and towns. This inexorable link between the community and its citizen-soldiers is what makes the National Guard an important and necessary part of their local and national communities.

The Minnesota Army and Air National Guard are reserve components of the United States Army and Air Force. During times of national emergency, National Guard members may be called into active Federal service by the President of the United States. Guard members from Minnesota have served in every major conflict involving the United States Armed Forces since the Guard's inception more than 360 years ago. At this time, Minnesota National Guard members are serving in Iraq, Bosnia, Afghanistan, and Kosovo, as well as in other countries and within the State of Minnesota.

For the past 40 years, National Guard members have primarily served within their own communities, helping assist local law enforcement agencies during emergencies. In this capacity, members worked for the Guard on a part-time basis, usually just during emergency situations. Guard members earned the majority of their income from their jobs in the community. In the past couple of years, Guard members have been called to active duty. Because of this, they no longer earn their civilian incomes. For the most part, their civilian pay far exceeds their pay on active duty. In addition, when Guard members are deployed, they and their families need to support two households—the Guard member in their remote location and the family the Guard member leaves behind. While employers are encouraged to meet the pay differential for the Guard, oftentimes small companies cannot meet this obligation. Many Guard members and their families are caught in an unanticipated set of circumstances due to long terms of deployment overseas while supporting and protecting our country.

Inspired by the National Guard's members' dedication, patriotism, and selflessness, many Minnesotans have stepped forward to help Minnesota National Guard soldiers and their families. The efforts of Bill and Teri Popp, of Minnetonka, MN, deserve special praise. Long-time supporters of the Guard, they gave generously and challenged other Minnesotans to join them in supporting the Minnesota National Guard. Bill, founder and owner of POPP Telecom, believes that his company can and should improve the quality of life for everyone in his community. To that end, the Popps donated $1,000 to every Minnesota National Guard member who was serving in Iraq, as of November 14, 2003. The gift the Popps made to Guard members in Iraq totaled $166,000.

A true patriot, Bill included a thank you letter to each Guard member that received the donation that provided: ''Thank you for putting your life on hold, and on the line, in service to our country. Thank you for . . . risking your life to advance liberty and justice for all people of the world.''

To then set an example to the community, the Popps made an additional donation to the Minnesota National Guard Foundation to help Guard members in financial need. Bill, through his company, also prepared and ran announcements on Minnesota radio stations encouraging other people and companies in Minnesota to make donations to the foundation to support members of the Minnesota National Guard and military reserves who have been impacted economically by extended periods of active duty service.

The Popps not only have promised to make sure the sacrifices the Guard and other military personal make in service to our country will not be forgotten, they have followed through to help that promise come true. They epitomize the strength and patriotism of our great Nation.

On behalf of all Minnesotans, I express my heartfelt appreciation to Bill and Teri Popp for their generosity and patriotism. They deserve all our thanks.

HONORING OUR ARMED FORCES

SERGEANT BENJAMIN GILMAN

Mr. DODD. Mr. President, I rise today to speak in tribute to U.S. Army Sgt. Benjamin Gilman, of Meriden, Connecticut, who died in Afghanistan on January 29, 2004, at the age of 28.

Sergeant Gilman was killed along with seven other American soldiers in a weapons cache explosion near the town of Ghazni. He was part of the 41st Engineer Battalion, 10th Mountain Division, based in Fort Drum, NY.

Benjamin Gilman was always doing his best to help others, long before he enlisted in our Armed Forces. As a teenager, he won an award for his volunteer work at the Veterans Memorial Medical Center. When visiting his mother at her job at the Curtis Home for the elderly, he would spend time with the senior citizens who lived there, sharing conversations over games of checkers. While working at a fast food restaurant at the local mall, Benjamin made friends with a group of elderly women he would come to call his ''adopted grandmothers.''

While he was committed to service of all kinds, it was always Benjamin Gilman's dream to serve his country in the military. Even as a 7-year-old playing with action figures, young Benjamin told anyone who would listen that he would be a soldier someday.

Benjamin was a special person for many people, and there were many people who were special to him. One of those people was Jean Moran. When Benjamin was 11 years old, he met Jean through a local Big Brother/Big Sister program. It was the first time that the program's organizers had assigned a big sister to a boy. But Jean became a fixture in Benjamin's life for years to come, taking on the role of the older sibling that he never had.

Of all the bonds and friendships Benjamin had, though, none was more lasting or special than his relationship with his mother, Edie Gilman. A single

mom, Edie poured her heart, soul, time, and energy into her only child. In the last letter he sent home from Iraq, Benjamin thanked his mother for everything she did for him, calling her his ''best friend in the entire world.''

My heart truly goes out to Edie Gilman, who has suffered the kind of loss that is difficult for most of us to comprehend. We often speak of the weighty burden borne by our men and women in uniform—and rightfully so. But we would do well to also remember the burden placed on the shoulders of the families of these brave Americans.

While our troops are defending our freedoms overseas, all across America there are husbands and wives who must bear the responsibility of raising children alone. There are sons and daughters who must do without a helping hand with their schoolwork, or an enthusiastic supporter at their soccer games. There are brothers and sisters who are missing a role model, a mentor, a friend.

There are fathers and mothers, who endure anxious days and sleepless nights knowing that their children are in harm's way. And then there are people like Edie Gilman, who one day learn the heartbreaking news that someone they love will never be coming home.

And so today I salute the courage, the commitment, and the conviction of Benjamin Gilman, a young man who lost his life fulfilling the noblest of callings, defending our Nation and the values we hold dear. And I offer my deepest and most heartfelt sympathies to Edie Gilman, who has made a sacrifice for her country that is too great for words.

TRIBUTE TO ALL MILITARY SERVICE MEN AND WOMEN AND THE BALTIMORE ORIOLES

Mr. CONRAD. Mr. President, I rise today to thank the service men and women who have served our country so bravely in Afghanistan and Iraq. I also want to thank Peter Angelos and the world-class organization that he leads, the Baltimore Orioles. All too often we hear negative stories revolving around professional athletes. With this in mind, I have to tell you about a wonderful event that took place a few nights ago.

Tuesday night, my colleagues in the Senate Democratic caucus, along with members of the Baltimore Orioles, visited Walter Reed Army Medical Center. We went to Walter Reed to personally thank and honor the brave men and women of our Armed Forces who have sacrificed so much for our country in Afghanistan and Iraq. When Peter Angelos was asked if anyone from the Orioles would be willing to visit soldiers at Walter Reed, there was an overwhelming response from players, coaches, and front office personnel alike. In fact, there were so many volunteers that not everyone could be accommodated. Specifically, I would like to recognize the following members of the Orioles organization who joined us at Walter Reed last night: pitchers John Parrish, Rick Bauer, Julio Jorge, Sidney Ponson, and Matt Riley; outfielders Larry Bigbie and Jay Gibbons; infielders Bran Roberts and Miguel Tejada, accompanied by his wife Santa; Jim Beattie, executive vice president of baseball operations, his wife Martha; Mike Flanagan, vice president of baseball operations, his wife Alex and daughter Kerry; and bullpen coach, Elrod Hendricks.

As a Senator from the great State of North Dakota, I know all too well the sacrifices that are made by members of this country's military. I am proud to say that North Dakota has the highest National Guard membership per capita in the Nation, and not surprisingly, during the Iraq crisis has had the most mobilized personnel per capita of any State.

Thus, it was truly heartwarming, as we went from table to table at Walter Reed, to see the enthusiasm of not only my fellow Senators, but also of the Baltimore Orioles in paying tribute to and recognizing the courageous men and women of the United States military. It is their professionalism, dedication, and hard work that provide the very freedoms that make this country great and it was obvious that these ideals were not lost on the members of the Baltimore Orioles.

ADDITIONAL STATEMENTS

IN RECOGNITION OF BLACK EAGLE'S GRAMMY WIN

● Mr. DOMENICI. Mr. President, I wish to recognize a group of musicians from my home State of New Mexico. The group, Black Eagle, won a Grammy this past Sunday night.

The Black Eagle group is from the Pueblo of Jemez, which is one of the 19 Indian pueblos in our State. Those of us who reside in the Southwest are familiar with the pueblos and their people, but many are not. The pueblos share many common traditions, but they are distinct entities and maintain unique identities. The Jemez Pueblo, located in north central New Mexico, is home to the beautiful red mesas, rich culture, and some of the most wonderfully talented people around. Uniquely, the Pueblo of Jemez is the only remaining village of the Towa speaking pueblos. The Pueblo has long been known for its artistic talent and craft, but now its distinguished musicians can now add ''the Grammy winning'' declaration to their accolades.

The Black Eagle group formed in the late 1980s. The group's founder, Malcom Yepa, started the group when he was in his teens. With some urging, he, several friends, and several family members began composing songs in their native Towa language. Currently, the Black Eagle's are comprised of about 20 members from all across the age spectrum.

Prior to their Grammy for best Native American Music Album, their sixth album ''Flying Free,'' won the Best Pow Wow Album of the Year award at the 2003 Native American Music Awards held in Albuquerque this past November. Both awards are a remarkable tribute to their hard work, commitment, and determination.

In addition to being musicians, the group has often reiterated their dedication to their village and their ancient culture. Furthermore, their resolve to positively influence young people is most admirable. For that, and for all their accomplishments, I am proud, and I salute each and every one of them here in this RECORD. May their recent success be only a prelude to future accomplishments, and may they continue to represent their people and the state of New Mexico with distinction.●

MESSAGES FROM THE PRESIDENT

Message 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.)

MESSAGE FROM THE HOUSE

At 1:31 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agreed to the amendment of the Senate to the bill (H.R. 743) to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

The message also announced that the House has passed the following bill, without amendment:

S. 523. An act to make technical corrections to laws relating to Native Americans, and for other purposes.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3783. An act to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

ENROLLED BILL SIGNED

At 10:07 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:

S. 610. An act to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. STEVENS).

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 2095. A bill to enhance energy conservation and research and development and to provide for security and diversity in the energy supply for the American people.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, February 12, 2004, she had presented to the President of the United States the following enrolled bill:

S. 610. An act to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

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–6337. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Thifensulfuron methyl; Tolerances Actions'' (FRL#7338–6) received on February 12, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6338. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Aldicarb, Atrazine, Cacodylic Acid, Carbofuran, et al; Tolerance Actions'' (FRL#7338–3) received on February 12, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6339. A communication from the Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Agency Organization'' (RIN00–033F) received on February 12, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6340. A communication from the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the report of retirement; to the Committee on Armed Services.

EC–6341. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the Department's Annual Statement of Assurance; to the Committee on Armed Services.

EC–6342. A communication from the Chairman, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the Board's semiannual Monetary Policy Report; to the Committee on Banking, Housing, and Urban Affairs.

EC–6343. A communication from the Director, Office of White House Liaison, transmitting, pursuant to law, the report of a designation acting officer and change in previously submitted reported information for the position of Assistant Secretary for Technology Policy, Department of Commerce, received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6344. A communication from the Director, Office of White House Liaison, transmitting, pursuant to law, the report of a nomination confirmed and change in previously submitted reported information for the position of Assistant Secretary for Export Enforcement, Department of Commerce, received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6345. A communication from the Director, Office of White House Liaison, transmitting, pursuant to law, the report of a nomination confirmed and change in previously submitted reported information for the position of Assistant Secretary for Export Administration, Department of Commerce, received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6346. A communication from the Director, Office of White House Liaison, transmitting, pursuant to law, the report of a designation of acting officer and change in previously submitted reported information for the position of Under Secretary for Intellectual Property and Director, Patent and Trademark Office, Department of Commerce, received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6347. A communication from the Director, Office of White House Liaison, transmitting, pursuant to law, the report of a nomination and change in previously submitted reported information for the position of Assistant Secretary and Director General, U.S. and Foreign Commercial Service, Department of Commerce, received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6348. A communication from the Director, Office of White House Liaison, transmitting, pursuant to law, the report of a vacancy, designation of acting officer, and change in previously submitted reported information for the position of Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6349. A communication from the Director, Office of White House Liaison, transmitting, pursuant to law, the report of a change in previously submitted reported information for the position of Assistant Secretary for Communications and Information, Department of Commerce, received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6350. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Grant and Cooperative Agreement Handbook—Central Contractor Registration'' (RIN2700–AC95) received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6351. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Grant and Cooperative Agreement Handbook—Investigative Requirements'' (RIN2700–AC74) received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6352. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Lifting of U.N. Sanctions Against UNITA'' (RIN0984–AC86) received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6353. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Revisions and Clarifications to the Export Administration Regulations'' (RIN0694–AC24) received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6354. A communication from the Secretary of Commerce, transmitting, the Department of Commerce's 2004 Report on Foreign Policy-Based Export Controls; to the Committee on Commerce, Science, and Transportation.

EC–6355. A communication from the Secretary of Transportation, transmitting, pursuant to law, two Annual Reports of Accomplishments under the Airport Improvement Program for fiscal years 1998 and 1999; to the Committee on Commerce, Science, and Transportation.

EC–6356. A communication from the Director, Bureau of Electronic Analysis, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Direct Investment Surveys: BE–15, Annual Survey of Foreign Direct Investment in the United States'' (RIN0691–AA48) received on February 12, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6357. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland; The 2005 ROP Plan for the Baltimore Severe 1-Hour Ozone Nonattainment Area: Revisions to the Plans' Emissions Inventories and Motor Vehicle Emissions Budgets to Reflect MOBILE6'' (FRL#7623–4) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6358. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Florida: Southeast Florida Area Maintenance Plan Update'' (FRL#7622–1) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6359. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Civil Monetary Penalty Inflation Adjustment Rule'' (FRL#7623–5) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6360. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Delegation of Authority to the Washington State Department of Ecology, Benton Clean Air Authority, Northwest Air Pollution Authority, Olympic Regional Clean Air Agency, Puget Sound Clean Air Agency, Spokane County Air Pollution Control Authority, Southwest Clean Air Agency, and Yakima Regional Clean Air Authority for New

Source Performance Standards'' (FRL#7623–3) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6361. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Delegation of Authority to the Oregon Department of Environmental Quality for New Source Performance Standards'' (FRL#7622–6) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6362. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Determination to Stay and/or Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District'' (FRL#7621–2) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6363. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Primary and Secondary Drinking Water Regulations: Approval of Additional Method for the Detection of Coliforms and E. Coli in Drinking Water'' (FRL#7622–8) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6364. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the Texas Underground Injection Control Program Approved Under Section 1422 of the Safe Drinking Water Act and Administered by the Railroad Commission of Texas'' (FRL#7622–9) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6365. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revision to the Texas Underground Injection Control Program Approved Under Section 1422 of the Safe Drinking Water Act and Administered by the Texas Commission on Environmental Quality'' (FRL#7623–1) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6366. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District'' (FRL#7614–9) received on February 12, 2004; to the Committee on Environment and Public Works.

EC–6367. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report entitled ''Tribal Pesticide and Special Projects''; to the Committee on Environment and Public Works.

EC–6368. A communication from the Regulations Officer, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Filing of Applications and Related Forms'' (RIN0960–AF52) received on January 20, 2004; to the Committee on Finance.

EC–6369. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Australia; to the Committee on Foreign Relations.

EC–6370. A communication from the Director, Business Operations, Defense Security Cooperation Agency, transmitting, pursuant to law, a report of actions required by Presidential Determination 02–16; to the Committee on Foreign Relations.

EC–6371. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of texts and background statements of international agreements, other than treaties; to the Committee on Governmental Affairs.

EC–6372. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Senior Executive Pay and Performance Awards'' received on February 12, 2004; to the Committee on Governmental Affairs.

EC–6373. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Information Technology Exchange Program'' received on February 12, 2004; to the Committee on Governmental Affairs.

EC–6374. A communication from the Deputy Associate Administrator, Office of Acquisition Policy, Governmental Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2001–19'' (FAC2001–19) received on February 12, 2004; to the Committee on Governmental Affairs.

EC–6375. A communication from the Chairman, National Science Board, transmitting, pursuant to law, the Board's report under the Government in Sunshine Act for the National Science Board in calendar year 2003; to the Committee on Governmental Affairs.

EC–6376. A communication from the Director, Office of Personnel Management, transmitting, a draft of proposed legislation to repeal retirement benefits provided by section 226 of Public Law 108–176 for certain air traffic control supervisors, and for other purposes; to the Committee on Governmental Affairs.

EC–6377. A communication from the Director, Workforce Relations and Accountability Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002'' (RIN3206–AJ93) received on February 12, 2004; to the Committee on Governmental Affairs.

EC–6378. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to the Performance-Based Child Support Incentive System; to the Committee on Health, Education, Labor, and Pensions.

EC–6379. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Pediculicide Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph'' (RIN0910–AA01) received on February 12, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6380. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review'' (Doc. No. 1980N–0208) received on February 12, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6381. A communication from the Assistant General Counsel for Regulatory Services, Office of Innovation and Improvement, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Magnet Schools Assistance Program'' (RIN1855–AA01) received on February 12, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6382. A communication from the Assistant Secretary for Administration and Management, Department of Health and Human Services, transmitting, pursuant to law, a copy of the commercial and inherently governmental activities inventory of the Department; to the Committee on Health, Education, Labor, and Pensions.

EC–6383. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to routine screening for thyroid dysfunction; to the Committee on Health, Education, Labor, and Pensions.

EC–6384. A communication from the Chairman, Railroad Retirement Board, transmitting, pursuant to law, the Board's Justification of Budget Estimates for Fiscal Year 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–6385. A communication from the Director, Faith Based and Community Initiatives Task Force, Office of the Attorney General, transmitting, pursuant to law, the report of a rule entitled ''Participation in Justice Department Programs by Religious Organizations Providing for Equal Treatment for all Justice Department Program Participants'' (RIN1105–AA83) received on February 12, 2004; to the Committee on the Judiciary.

EC–6386. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the Fiscal Year 2002 Annual Report to Congress for the Bureau of Justice Assistance; to the Committee on the Judiciary.

EC–6387. A communication from the Chief Judge, United States Court of Federal Claims, transmitting, pursuant to law, a report relative to Hardwick, Inc. v. United States; to the Committee on the Judiciary.

EC–6388. A communication from the National Commander, American Ex-Prisoners of War, transmitting the American Ex-Prisoners of War's financial statements for the year ended August 31, 2003; to the Committee on the Judiciary.

EC–6389. A communication from the Chairman, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Extension of Administrative Fines Program'' received on February 10, 2004; to the Committee on Rules and Administration.

PETITIONS AND MEMORIALS

POM–352. A memorial adopted by the Senate of the Legislature of the State of Florida relative to enacting a Medicare Prescription Drug Benefit; to the Committee on Finance.

SENATE MEMORIAL NO. 1180

Whereas, the use of prescription drugs improves the quality of care and helps patients live healthier, longer, and more productive lives while keeping them out of more costly acute care settings in the long term, and

Whereas, the increased use of new and improve prescription drugs has changed the delivery of health care in the United States since Medicare was enacted, and while two-thirds of the Medicare population has some form of prescription drug coverage, although it many times is inadequate, one-third of Medicare beneficiaries have no coverage at all, and

Whereas, Congress did not enact a drug benefit in the Medicare program, and therefore the program is inadequate in providing the elderly and disabled the most appropriate drug therapies, preventing the delivery of quality health care at an affordable cost, and

Whereas, the private sector provides affordable coverage by negotiating discounts on drugs and meeting the needs of special populations with chronic diseases and those with co-morbidities through coordinating

care with disease management, drug utilization review, and patient education programs, all of which aid in ameliorating medical errors, and

Whereas, comprehensive reform of the Medicare program would use the successful tools of the private sector in coordinating care for this population and use the marketplace to foster competition among private plans, resulting in more choices of quality coverage for seniors and the disabled while maintaining the financial sustainability of the program, and

Whereas, Congress's inaction has failed to provide for comprehensive reform of Medicare, encouraging states to use their own resources to ease the burden of their elderly and disabled populations and effectively to assume an unfunded, informal mandate, and

Whereas, in implementing state programs to assist the Medicare population, state budgetary constraints can often result in requirements to restrict and limit the patient's access to needed prescription drugs, and enact anticompetivie price controls: Now, therefore, be it

Resolved by the Legislature of the State of Florida, That the Congress of the United States is urged to enact financially sustainable, voluntary, universal, and privately administered out-patient prescription drug coverage as part of the federal Medicare program; be it further

Resolved, That copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

POM–353. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to economic stability and future growth; to the Committee on Finance.

SENATE RESOLUTION NO. 137

Whereas, the attack on America of September 11, 2001, was a shock to the Commonwealth of Pennsylvania and the nation; and

Whereas, there is an ongoing military and multidimensional response to terrorism that is strongly supported throughout this Commonwealth; and

Whereas, the United States faces the potential of a serious recession, having already lost 50,000 manufacturing jobs in Pennsylvania alone since the beginning of the year, and the September 11, 2001, attack on America may cause the loss of thousands of additional jobs; and

Whereas, the Congress of the United States has already taken critical action to support affected industries and is proposing additional aid to business; and

Whereas, the Congress is considering an economic stimulus package; and

Whereas, the core goal of an economic stimulus package is the stabilization of communities; and

Whereas, supporting business to stabilize employment must be a critical part of any economic stimulus package to be adopted by the Congress; and

Whereas, support for negatively impacted workers must be included as part of any economic stimulus package to stabilize the economy; and

Whereas, supporting state and local governments to avoid or mitigate a lessening of state or local tax revenues is a critical part of any economic stimulus package; and

Whereas, the economic stimulus package should include the following provisions: extending federally funded unemployment compensation, where needed, by 26 weeks; aiding workers by improving health care access with the Federal Government at least paying 75% of the COBRA health care costs and other health care assistance; siding workers by fully funding targeted training and worker reemployment programs and taking action to assist with mortgages of personal residences and to stabilize other credit transactions; and

Whereas, if the Congress does not address the critical areas of economic stimulus, business, workers and state and local government, these costs will have to be borne by state and local governments, workers and business; Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania urge the Congress of the United States to address the critical areas that will create economic stability and allow future growth; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–354. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to trade with foreign nations; to the Committee on Foreign Relations.

HOUSE RESOLUTION NO. 166

Whereas, through international agreements and in the spirit of fair and balanced trade, the United States dollar is allowed to float freely, with little to no market intervention; and

Whereas, many of the trade partners with the United States, including, but not limited to, the European Union, Canada, and Mexico, operate with a floating exchange rate within the international financial system; and

Whereas, there are nations that are able to sell goods at rates lower than the cost of production in the United States, in part, through a manipulation of their nation's currency. This contributes significantly to creating an unfair trade balance; and

Whereas, foreign countries that manipulate their currency are able to sell goods in the United States at an artificial price, lower than the cost of domestically produced products. Doing so undercuts American manufactured products, and it may soon eliminate domestic manufacturing; and

Whereas, the loss of the domestic manufacturing industry poses a substantial threat to the nation's security by requiring the United States to depend on other nations to produce critical components for our defense programs.

Whereas, currency manipulation has contributed to substantial trade deficits with certain nations. The increase in the trade deficit with China alone, one of the countries known for currency manipulation, represents about 15 percent of the decline in United States production since 2000; and

Whereas, Article IV of the International Monetary Fund Articles of Agreement states that members shall ''avoid manipulating exchange rates for the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members.'' Under IMF surveillance procedures, a principal indicator of such manipulation is ''protracted large scale intervention in one direction in the exchange market'': Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to take the necessary actions, through the International Monetary Fund or otherwise, to ensure that foreign nations that trade with the United States do so fairly and do not manipulate their currency; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the United States Secretary of Commerce, and the members of the Michigan congressional delegation.

POM–355. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to funding for the Low Income Home Energy Assistance Program; to the Committee on Health, Education, Labor, and Pensions.

HOUSE RESOLUTION NO. 486

Whereas, our present economic situation continues to result in thousands of Pennsylvanians being laid off from their jobs or having to take lesser-paying jobs; and

Whereas, high energy prices lead to all Pennsylvanians, especially low-income families, the elderly and the working poor, having less money to spend on the basic necessities of life such as food, clothing and shelter in the winter months; and

Whereas, because of high natural gas prices during the summer months, when gas companies normally fill their reserves, Pennsylvania's natural gas distribution companies expect to significantly raise their prices up to 30 percent since the beginning of this year; and

Whereas, for typical home heating customers, this situation could mean that natural gas customers will face bills this coming winter of $30 to $45 per month higher than a year ago; and

Whereas, the cost of home heating oil has risen more than 25 percent since last winter, and recent announcements of future production cuts by the Organization of the Petroleum Exporting Countries (OPEC) may again lead to higher prices this winter; and

Whereas, the Congress has begun to debate, but not yet agreed on, final appropriations for the Low Income Home Energy Assistance Program (LIHEAP) for the next fiscal year which commences on October 1, 2003; and

Whereas, the United States House of Representatives has so far only agreed to support $1.8 billion in regular and contingency LIHEAP assistance; and

Whereas, the President of the United States has proposed and the United States Senate has so far agreed to support a total of $2 billion in regular and contingency LIHEAP assistance; and

Whereas, the United States Senate recently defeated an effort to authorize another $300 in emergency LIHEAP spending that would lead to a total of $2.3 billion for LIHEAP; and

Whereas, increasing LIHEAP funding should entitle the Commonwealth of Pennsylvania to a proportionate increase in LIHEAP funds and would enable more people facing colder weather and decreased income to help meet their present need for heating assistance: Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the President and the Congress of the United States to support efforts to increase LIHEAP funding over last year's funding; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–356. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to biological and chemical attacks; to the Committee on Health, Education, Labor, and Pensions.

SENATE RESOLUTION NO. 128

Whereas, S. 1508 was introduced in the Congress of the United States on October 4, 2001; and

Whereas, the bill is intended to increase the preparedness of the United States to respond to a biological or chemical weapons attack; and

Whereas, if enacted in its current form, the bill will be known as the Biological and Chemical Attack Preparedness Act and will require the states to develop and implement a public health disaster plan for responding to biological or chemical attacks within a certain time period of publication of standards developed by the Secretary of Health and Human Services; and

Whereas, the bill also authorizes the Secretary of Health and Human Services to award grants to hospitals and health care providers to provide training, give treatment, purchase equipment and employ personnel consistent with the public health disaster plans of the states; and

Whereas, the Senate of the Commonwealth of Pennsylvania supports the intent and concept of the bill pending in Congress: Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize the Congress of the United States to enact S. 1508, which increases the preparedness of the United States to respond to a biological or chemical weapons attack; and be it further

Resolved, That a copy of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–357. A resolution adopted by the Senate of the Legislature of the State of Texas relative to the ability of federal courts to levy or increase taxes; to the Committee on the Judiciary.

SENATE RESOLUTION NO. 373

Whereas, in 1990, the United States Supreme Court, in the case of Missouri, et al. v. Jenkins, et al. (495 U.S. 33), chose to disregard Article I, Section 8, of the United States Constitution, which reserves exclusively to the legislative branch of government the power to tax the citizenry; and

Whereas, in drafting that constitutional section and allocating the power of taxation, the Founding Fathers drew on the Petition of Right, an English law initiated by Sir Edward Coke, then approved by the British House of Commons and accepted by King Charles I on June 7, 1628, which states in pertinent part that ''. . . no man hereafter [may] be compelled to make or yield any . . . tax . . . without common consent by Act of Parliament . . .''; and

Whereas, in 1787, the framers of the United States Constitution reiterated that time-tested principle of limited taxation, specifically vesting with the legislative branch the ''. . . Power To lay and collect Taxes, Duties, Imposts and Excises . . .''; and

Whereas, their intent is unambiguous, made clear by the analysis of James Madison, who observed in The Federalist No. 48 that ''. . . the legislative department alone has access to the pockets of the people . . .''; and

Whereas, the same view is expressed by Alexander Hamilton, who asked rhetorically in the Federalist No. 33, ''[w]hat is the power of laying and collecting taxes but a legislative power . . .?,'' and follows consistently in the Federalist No. 78, in which he argued that the judiciary should be the least dangerous branch of government inasmuch as judges would have ''. . . no influence over either the sword or the purse . . .''; and

Whereas, yet today, Hamilton's argument no longer rings true; through legal orders and the exercise of judicial threat and intimidation, federal courts have usurped the power of the legislative branch and have gone so far as to apply it even to nonfederal levels of government, mandating state and local requirements that have the direct, or indirect, effect of imposing judicial taxes on the states and their political subdivisions; and

Whereas, in so vesting itself by fiat with control of the public purse strings, the federal judiciary has contravened and overridden the constitutional separation of powers between the different branches and levels of government, threatening creation of a fiscal oligarchy unbeholden to influence by the electorate; and

Whereas, the states and congress have too long ignored this self-proclamation and seizure of taxation powers, and it behooves all Americans to preserve their rights by the adoption of an amendment to the Constitution of the United States, re-establishing the fundamental link between taxation and representation; and

Whereas, seeking to reverse the aforementioned Jenkins decision of 1990, lawmakers in 23 other states—and in two territories of the United States—beginning in 1993, have already adopted and transmitted to congress memorials requesting that congress propose an amendment to the United States Constitution, and those memorials have been entered in the Congressional Record as follows:

the Missouri General Assembly in 1993 (Senate Concurrent Resolution No. 9) designated as POM–175 in Volume 139 of the Congressional Record at page 14565;

the Colorado General Assembly in 1994 (Senate Joint Memorial No. 94–2) designated as POM–569 in Volume 140 of the Congressional Record at page 15070;

the New York Senate in 1994 (Senate No. 3353) designated as POM–578 in Volume 140 of the Congressional Record at page 15073;

the Tennessee General Assembly in 1994 (Senate Joint Resolution No. 372) designated as POM–580 in Volume 140 of the Congressional Record at page 15074;

the Arizona Legislature in 1995 (Senate Concurrent Resolution No. 1014) designated as POM–523 in Volume 142 of the Congressional Record at pages 6586 and 6587;

the Louisiana Legislature in 1995 (Senate Concurrent Resolution No. 11) designated as POM–525 in Volume 142 of the Congressional Record at pages 6587;

the Massachusetts Senate in 1995 (unnumbered resolution) designated as POM–625 in Volume 142 of the Congressional Record at pages 14940 and 14941 and designated as POM–638 at page 15486;

the Nevada Legislature in 1995 (Senate Joint Resolution No. 2) designated as POM–287 in Volume 141 of the Congressional Record at page 22422;

the Alaska Legislature in both 1996 and 1998 (House Joint Resolution No. 30 in 1996) designated as POM–622 in Volume 142 of the Congressional Record at pages 14939 and 14940; (House Joint Resolution No. 57 in 1998) designated as POM–515 in Volume 144 of the Congressional Record at page S9042;

the Michigan Legislature in 1996 (Senate Concurrent Resolution No. 278) designated as POM–444 in Volume 144 of the Congressional Record at page S5515;

the South Dakota Legislature in 1996 (House Concurrent Resolution No. 1010) designated as POM–526 in Volume 142 of the Congressional Record at page 6587;

the Delaware General Assembly in 1997 (House Concurrent Resolution No. 6) designated as POM–120 in Volume 143 of the Congressional Record at page S5252;

the Alabama Legislature in 1998 (House Joint Resolution No. 261) designated as POM–416 in Volume 144 of the Congressional Record at page S9405;

the Oklahoma Legislature in 1998 (Senate Concurrent Resolution No. 50) designated as POM–479 in Volume 144 of the Congressional Record at pages S6404 and S6405;

the Illinois Senate in 1999 (Senate Resolution No. 216) designated as POM–449 in Volume 146 of the Congressional Record at page S1814 and designated as POM–512 at page S3611;

the Utah Legislature in 1999 (House Joint Resolution No. 5) designated as POM–285 in Volume 145 of the Congressional Record at page S9945;

the Kansas Legislature in 2000 (House Concurrent Resolution No. 5059) designated as POM–527 in Volume 146 of the Congressional Record at page S4378;

the New Hampshire General Court in 2000 (House Concurrent Resolution No. 27) designated as POM–531 in Volume 146 of the Congressional Record at page S6469;

the Pennsylvania General Assembly in 2000 (Senate Resolution No. 47) designated as POM–642 in Volume 146 of the Congressional Record at pages S11788 and S11789;

the South Carolina General Assembly in 2000 (House Concurrent Resolution No. 4434) designated as POM–641 in Volume 146 of the Congressional Record at page S11575;

the West Virginia Legislature in 2000 (House Concurrent Resolution No. 5) designated as POM–442 in Volume 146 of the Congressional Record at page S1669;

the House of Representatives of the Commonwealth of the Northern Mariana Islands—a territory of the United States—in 2000 (House Resolution No. 12–109) designated as Memorial No. 1 in Volume 147 of the Congressional Record at page H111; as well as the Senate of the Commonwealth of the Northern Mariana Islands, likewise in 2000, (Senate Resolution No. 12–33) designated as POM–46 in Volume 147 of the Congressional Record at page S4244;

the North Dakota Legislative Assembly in 2001 (House Concurrent Resolution No. 3031) designated as POM–7 in Volume 147 of the Congressional Record at pages S3704 and S3705;

the Legislature of the United States Territory of Guam in 2001 (Resolution No. 6) designated as POM–357 in Volume 148 of the Congressional Record at page S10570; and

the Wyoming Legislature in 2002 (Senate Joint Resolution No. SJ003, later styled Enrolled Joint Resolution No. 2) designated as POM–250 in Volume 148 of the Congressional Record at pages S5630 and S5631; now: Therefore, be it

Resolved, That the Senate of the 78th Legislature of the State of Texas, Regular Session, 2003, hereby memorialize the United States Congress to propose and submit to the states for ratification as amendment to the United States Constitution to prohibit all federal courts from ordering or instructing any state or political subdivision thereof, or an official of any state or political subdivision, to levy or increase taxes; and, be it further

Resolved, That the congress be respectfully requested to entertain the following suggested text for such an amendment: ''ARTICLE 'Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to levy or increase taxes' ''; and, be it further

Resolved, That the secretary of the Texas Senate forward official copies of this resolution to the vice president of the United States, to the speaker of the United States House of Representatives, and to all members of the Texas delegation to the congress, with the request that this resolution be entered officially in the Congressional Record as a memorial to the Congress of the United States of America to propose for ratification a federal constitutional amendment to prohibit judicially imposed taxes.

POM–358. A joint resolution adopted by the Legislature of the State of Ohio relative to ratification of the Fourteenth Amendment; to the Committee on the Judiciary.

AMENDED SENATE JOINT RESOLUTION NO. 2

Whereas, both houses of the thirty-ninth Congress of the United States of America, at the first session of such Congress, by a constitutional majority of two-thirds of the members of each house thereof, made a proposition to amend the Constitution of the United States in the following words, to wit: ''Joint Resolution proposing an amendment to the constitution of the United States.

Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several states as an amendment to the constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as a part of the constitution, namely: ARTICLE XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of make citizens, twenty one years of age in such state.

Sec. 3. No person shall be a senator or representative in congress, or elector of president or vice president, or hold any office, civil or military, under the United States, or under any state, who having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection of rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

Sec. 4. the validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States, nor any state, shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.''

Whereas, the General Assembly of the State of Ohio ratified the Fourteenth Amendment to the United States Constitution by a Joint Resolution adopted January 11, 1867, but by a further Joint Resolution, voted to rescind its ratification of the Amendment on January 15, 1868, before the Amendment became effective in July 1868; and

Whereas, the State of Ohio is considered by many authorities to have ratified the Amendment, but other authorities assert that Ohio's rescission may have been valid; and

Whereas, the validity of the Fourteenth Amendment is indisputable regardless of the validity of Ohio's rescission because Congress approved it by a two-thirds majority on June 13, 1866, and every State in the Union at the time has subsequently supported it, thereby exceeding the necessary three-quarters majority; and

Whereas, the Fourteenth Amendment is the primary guaranty for individual rights and liberties through its protection of the privileges and immunities of citizens of the United States, its prohibition on the deprivation of life, liberty or property without due process of law, and its guaranty of equal protection of the laws; and

Whereas, the ratification of the Fourteenth Amendment demonstrates the support of the people of the State of Ohio for the principles embodied therein: Now therefore be it

Resolved by the General Assembly of the State of Ohio, That the said Amendment to the Constitution of the United States is hereby ratified; and be it further

Resolved, That the Secretary of State of the State of Ohio be directed to deliver to the Governor of this state a certified copy of this resolution, and such certified copy shall be forwarded at once by the Governor to the Administrator of General Services, United States Government, Washington, D.C., to the President Pro Tempore of the Senate of the United States, to the Speaker of the House of Representatives of the United States, and to the Secretary of State of the United States.

POM–359. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to intellectual property rights; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 164

Whereas, since the birth of our nation, the United States has amassed a remarkable record of creativity and discovery. Our history is replete with the development of new goods and production methods to advance the quality of life, and we have developed a strong economy based on these discoveries; and

Whereas, members of the manufacturing industry have cited a number of examples where companies in other nations have been infringing upon intellectual property rights. This has resulted in financial losses and further exacerbated the challenges faced by our manufacturers; and

Whereas, the World Trade Organization and the World Intellectual Property Organization implemented a set of standards and principles outlining how international intellectual property rights should be applied and how to settle disputes between members of the World Trade Organization and the World Intellectual Property Organization; and

Whereas, the United States can defend the intellectual property rights of domestic business through the procedures established by the World Trade Organization and the World Intellectual Property Organization; and

Whereas, to ensure a vibrant economic recovery in Michigan, our businesses and entrepreneurs must be secure in their intellectual property, for it is through these innovations that companies build their economic strength and maintain their competitiveness: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to expand its efforts through the World Trade Organization and the world Intellectual Property Organization to ensure that the intellectual property of domestic businesses and individuals is protected and that actions are taken against those countries that violate the World Trade Organization and World Intellectual Property Organization standards; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States of America, the President of the United States Senate, the Speaker of the United States House of Representatives, the United States Secretary of Commerce, the Under Secretary of Commerce for Intellectual Property in the United States Patent and Trade Office, and the members of the Michigan congressional delegation.

POM–360. A joint resolution adopted by the General Assembly of the State of New Jersey relative to New Jersey's ratification of the Fourteenth Amendment; to the Committee on the Judiciary.

SENATE JOINT RESOLUTION NO. 16

Whereas, the Fourteenth Amendment to the United States Constitution granted citizenship to, and protected the civil liberties of, freed slaves; and

Whereas, the Fourteenth Amendment also prohibits states from abridging the privileges or immunities of any citizen, depriving any person of life, liberty, or property without due process of law, or denying any person equal protection of the laws; and

Whereas, the rights guaranteed by the Fourteenth Amendment are part of the foundation of our free society; and

Whereas, in 1866, the New Jersey Legislature acted to ensure these rights by ratifying the Fourteenth Amendment; and

Whereas, thereafter, the New Jersey Legislature, in 1868, attempted to withdraw its ratification of this amendment by passage of Joint Resolution No. IV; and

Whereas, both the Federal Secretary of State and the Congress refused to recognize New Jersey's attempt to withdraw ratification and the Fourteenth Amendment became a part of the United States Constitution on July 20, 1868; and

Whereas, the attempt to withdraw New Jersey's ratification of the Fourteenth Amendment is contrary to this State's long tradition of respect for, and protection of, the civil rights of all persons; and

Whereas, even though the attempt to withdraw New Jersey's ratification of the Fourteenth Amendment was without effect, there is, nevertheless, a need to rectify this misguided action: Now, therefore, be it

Resolved by the Senate and General Assembly of the State of New Jersey:

1. Joint Resolution No. IV of 1868 which attempted to withdraw New Jersey's ratification of the Fourteenth Amendment is hereby revoked.

2. Duly authenticated copies of this Joint Resolution shall be transmitted to the federal Secretary of State, the presiding officers of the Congress of the United States, and each member of New Jersey's congressional delegation.

3. This Joint Resolution shall take effect immediately.

POM–361. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to supporting capital activities in Michigan; to the Committee on Small Business and Entrepreneurship.

SENATE RESOLUTION NO. 163

Whereas, access to capital is a key component of establishing a new enterprise. The ability to raise sufficient funding to start a business is one of the major hurdles any entrepreneur faces in attempting to create a new company; and

Whereas, because the creation of new businesses is fundamental to job creation and a successful economy, making capital more available to start-up companies is a challenge of great significance to our communities and the entire country. In response to the need, Congress has on several occasions enacted measures to encourage the establishment of new business. Congressional tools, including tax incentives for high-risk companies at the early stages of development and other moves that encourage investment in start-up ventures, can be highly beneficial; and

Whereas, Michigan is strongly committed to encouraging venture capital investment in this state. Our efforts, however, will not be nearly as effective as they could be without similar leadership from Congress. A multi-pronged effort, with both the states and the national government encouraging private enterprise, can lead to greater innovation in any number of fields. This innovation, a hallmark of American society is critical to the vitality of our national economy as we respond to challenges in an era of great change: Now, therefore, be it

Resolved by the senate, That we memorialize the Congress of the United States to enact measures that support venture capital activities in Michigan; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–362. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to a federal charter for the Korean War Veterans Association; to the Committee of Veteran's Affairs.

SENATE RESOLUTION NO. 187

Whereas, as our country has marked the fiftieth anniversary of the ending of hostilities in Korea, historians, policymakers, and veterans of that difficult conflict have reflected on the impact of the war on our country and the world. Revisiting the events surrounding the Korean War has brought public attention to many aspects of what some call ''the forgotten war''; and

Whereas, unlike other veterans groups, the Korean War Veterans Association does not have a federal charter. Without this charter, this respected organization—the only veterans groups comprised entirely of veterans of the Korean War—cannot provide the same level of services other groups can. This deficiency makes it more difficult for members and families to receive appropriate services; and

Whereas, legislation to extend a federal charter to the Korean War Veterans Association is pending in both the House of Representatives (H.R. 1043) and the Senate (S. 478) of the Congress. Enactment of this measure will enable the Korean War Veterans Association to provide a wider range of services, especially the processing of claims. Clearly, this long-overdue status will assist our heroes of the Korean War and express the nation's respect for their sacrifices and honor: Now, therefore, be it

Resolved by the senate, That we memorialize the Congress of the United States to enact legislation to grant a federal charter to the Korean War Veterans Association; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–363. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to a new national veterans' cemetery in Philadelphia; to the Committee on Veterans' Affairs.

SENATE RESOLUTION NO. 124

Whereas, veterans residing in metropolitan Philadelphia are in desperate need of a new national veterans cemetery; and

Whereas, southeastern Pennsylvania veterans do not have the opportunity to be buried in a veterans cemetery within 75 miles of their home, as the Department of Veterans Affairs guidelines require, and this imposes an emotional and physical burden on their surviving loved ones; and

Whereas, the importance of and need for a veterans cemetery in the southeastern Pennsylvania region has already been recognized by the 108th Congress; and

Whereas, for providing heroic service and sacrifice to our nation, southeastern Pennsylvania veterans should have the opportunity to be buried close to home: Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize Congress to pass H.R. 1516; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–364. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania urging Congress to not lower veterans' benefits in the budget; to the Committee on Veterans' Affairs.

SENATE RESOLUTION NO. 161

Whereas, the Congress of the United States is considering a proposed national budget that includes further reductions to veterans' health care benefits based on establishing new annual enrollment fees, more than doubling copay requirements and restricting long-term access to benefits for future veterans currently serving their country on active duty at home and abroad; and

Whereas, the proposed reductions to veterans' health care benefits come at a time when this country is experiencing a nationwide health care crisis that forces millions of senior citizens, many of whom are veterans living on fixed income, to choose between purchasing food or medical services and prescription drugs to treat life-threatening illnesses; and

Whereas, the health care benefit needs of veterans deserve to be given a higher priority in the national budget so as to ensure the full funding of veterans' health care programs: Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize the President and Congress of the United States to not reduce veterans' benefits in the national budget; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. GRASSLEY for the Committee on Finance.

*Samuel W. Bodman, of Massachusetts, to be Deputy Secretary of the Treasury.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. MURRAY (for herself, Mr. LEAHY, and Mr. REID):

S. 2068. A bill to enhance and improve benefits for members of the National Guard and Reserves who serve extended periods on active duty, and for other purposes; to the Committee on Finance.

By Mr. BROWNBACK (for himself and Mr. BAYH):

S. 2069. A bill to expand the S visa classification to include aliens who are in possession of critical reliable information with respect to weapons of mass destruction, to establish a Weapons of Mass Destruction Informant Center, and for other purposes; to the Committee on the Judiciary.

By Mr. HAGEL:

S. 2070. A bill to amend the Animal Health Protection Act to direct the Secretary of Agriculture to implement the United States Animal Identification Plan, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KOHL (for himself and Mr. KENNEDY):

S. 2071. A bill to expand the definition of immediate relative for purposes of the Immigration and Nationality Act; to the Committee on the Judiciary.

By Mr. CRAIG:

S. 2072. A bill to amend the Internal Revenue Code of 1986 to allow a nonrefundable tax credit for elder care expenses; to the Committee on Finance.

By Mr. CORNYN (for himself and Mr. LOTT):

S. 2073. A bill to amend chapter 1 of title 3, United States Code, relating to Presidential succession; to the Committee on Rules and Administration.

By Mr. DORGAN:

S. 2074. A bill for the relief of Klas Dieter Hinze, Heidi Hinze, Annamarie Hinze, and Robert Arndt; to the Committee on the Judiciary.

By Mr. REID (for himself, Mrs. LINCOLN, and Mr. BREAUX):

S. 2075. A bill to amend title III of the Public Health Service Act to include each year of fellowship training in geriatric medicine or geriatric psychiatry as a year of obligated service under the National Health Corps Loan Repayment Program; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BAUCUS:

S. 2076. A bill to amend title XI of the Social Security Act to provide direct congressional access to the office of the Chief Actuary in the Centers for Medicare & Medicaid Services; to the Committee on Finance.

By Mr. CRAIG (for himself and Mr. BAYH):

S. 2077. A bill to amend title XIX of the Social Security Act to permit additional States to enter into long-term care partnerships under the Medicaid Program in order to promote the use of long-term care insurance; to the Committee on Finance.

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. 2078. A bill to suspend temporarily the duty on Liquid Crystal Device panel assemblies for use in Liquid Crystal Device projection type televisions; to the Committee on Finance.

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. 2079. A bill to suspend temporarily the duty on electron guns for cathode ray tubes (CRT's) for high definition televisions with a high definition television screen aspect ratio of 16:9; to the Committee on Finance.

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. 2080. A bill to suspend temporarily the duty on flat panel screen assemblies for use in plasma flat panel screen televisions; to the Committee on Finance.

By Ms. MIKULSKI (for herself, Mr. SARBANES, Mr. HATCH, and Mr. BIDEN):

S. 2081. A bill to amend the Office of National Drug Control Policy Act Reauthorization Act of 1998 to ensure that adequate funding is provided for certain high intensity drug trafficking areas; to the Committee on the Judiciary.

By Mr. SHELBY (for himself, Mr. MILLER, Mr. BROWNBACK, Mr. GRAHAM of South Carolina, Mr. INHOFE, and Mr. ALLARD):

S. 2082. A bill to limit the jurisdiction of Federal courts in certain cases and promote federalism; to the Committee on the Judiciary.

By Mrs. BOXER:

S. 2083. A bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ALEXANDER (for himself, Mr. CARPER, Mr. DORGAN, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INOUYE, Mr. LAUTENBERG, Mr. ROCKEFELLER, and Mr. VOINOVICH):

S. 2084. A bill to revive and extend the Internet Tax Freedom Act for 2 years, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. REID (for himself and Mr. ENSIGN):

S. 2085. A bill to modify the requirements of the land conveyance to the University of Nevada at Las Vegas Research Foundation; to the Committee on Energy and Natural Resources.

By Mr. THOMAS (for himself and Mr. ENZI):

S. 2086. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to improve the reclamation of abandoned mines; to the Committee on Energy and Natural Resources.

By Mr. GRAHAM of Florida:

S. 2087. A bill to amend the Internal Revenue Code of 1986 to expand the Hope Scholarship and Lifetime Learning Credits; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. DASCHLE, Mr. REID, Mr. LEAHY, Mr. DODD, Mr. HARKIN, Mr. KERRY, Mr. FEINGOLD, Ms. MIKULSKI, Mr. SCHUMER, Mrs. MURRAY, Mr. DURBIN, Mr. EDWARDS, Mrs. CLINTON, Mr. SARBANES, Mr. LAUTENBERG, Mr. CORZINE, Ms. LANDRIEU, and Ms. CANTWELL):

S. 2088. A bill to restore, reaffirm, and reconcile legal rights and remedies under civil rights statutes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CHAMBLISS:

S. 2089. A bill to allow aliens who are eligible for diversity visas to be eligible beyond the fiscal year in which they applied; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. KENNEDY, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. EDWARDS, Mr. AKAKA, Mr. DORGAN, Mr. FEINGOLD, Mr. WYDEN, Mr. CORZINE, Ms. STABENOW, Mr. SCHUMER, Mrs. CLINTON, Mr. KERRY, and Mrs. FEINSTEIN):

S. 2090. A bill to amend the Worker Adjustment and Retraining Notification Act to provide protections for employees relating to the offshoring of jobs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FRIST (for himself, Ms. LANDRIEU, Mr. COCHRAN, Mr. DEWINE, Mr. BOND, Mr. WARNER, Mr. TALENT, and Mrs. HUTCHISON):

S. 2091. A bill to improve the health of health disparity population; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ALLEN (for himself, Mr. INHOFE, Mr. JOHNSON, Mr. KYL, Mr. LIEBERMAN, Mr. LOTT, Mr. DURBIN, Mr. VOINOVICH, Ms. COLLINS, Mr. CRAPO, and Mr. BOND):

S. 2092. A bill to address the participation of Taiwan in the World Health Organization; to the Committee on Foreign Relations.

By Mrs. HUTCHISON (for herself, Mr. BROWNBACK, Mr. BUNNING, Mr. CHAMBLISS, and Mr. COCHRAN):

S. 2093. A bill to maintain full marriage tax penalty relief for 2005; to the Committee on Finance.

By Mr. DODD:

S. 2094. A bill to protect United States workers from competition of foreign workforces for performance of Federal and State services contracts; to the Committee on Governmental Affairs .

By Mr. DOMENICI:

S. 2095. A bill to enhance energy conservation and research and development and to provide for security and diversity in the energy supply for the American people; read the first time.

By Mr. CAMPBELL:

S.J. Res. 27. A joint resolution recognizing the 60th anniversary of the Allied landing at Normandy during World War II; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWNBACK (for himself, Mr. LEAHY, Mr. DEWINE, Mr. MCCAIN, Mr. WYDEN, Mr. BAYH, Mr. KYL, Mr. INHOFE, Mr. COLEMAN, Ms. LANDRIEU, and Mr. CHAMBLISS):

S. Res. 302. A resolution expressing the sense of the Senate that the United States should not support the February 20, 2004, elections in Iran and that the United States should seek a genuine democratic government in Iran that will restore freedom to the Iranian people and will abandon terrorism; to the Committee on Foreign Relations.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. Res. 303. A resolution commending the Carroll College Fighting Saints football team for winning the 2003 National Association of Intercollegiate Athletics (NAIA) national football championship game; considered and agreed to.

By Mr. BROWNBACK (for himself, Mr. LEAHY, Mr. BIDEN, and Mr. DASCHLE):

S. Res. 304. A resolution expressing the sense of the Senate that the United States should not support the February 20, 2004, elections in Iran and that the United States should advocate democratic government in Iran that will restore freedom to the Iranian people and will abandon terrorism; considered and agreed to.

By Mr. CORNYN (for himself and Mr. LOTT):

S. Con. Res. 89. A concurrent resolution expressing the sense of the Congress with respect to the continuity of the Presidency; to the Committee on Rules and Administration.

ADDITIONAL COSPONSORS

S. 480

At the request of Mr. HARKIN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 480, a bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 736

At the request of Mr. ENSIGN, the names of the Senator from Arizona (Mr. KYL) and the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 893

At the request of Mr. SANTORUM, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 893, a bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 985

At the request of Mr. DODD, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1095

At the request of Mr. SUNUNU, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1095, a bill to amend title XVIII of the Social Security Act to improve outpatient vision services under part B of the medicare program.

S. 1126

At the request of Mr. JOHNSON, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1126, a bill to establish the Office of Native American Affairs within the Small Business Administration, to create the Native American Small Business Development Program, and for other purposes.

S. 1180

At the request of Mr. SANTORUM, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1180, a bill to amend the Internal Revenue Code of 1986 to modify the work opportunity credit and the welfare-to-work credit.

S. 1189

At the request of Mr. DURBIN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1189, a bill to ensure an appropriate balance between resources and accountability under the No Child Left Behind Act of 2001.

S. 1414

At the request of Mr. HATCH, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 1414, a bill to restore second amendment rights in the District of Columbia.

S. 1422

At the request of Mr. CORZINE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1422, a bill to provide assistance to train teachers of children with autism spectrum disorders, and for other purposes.

S. 1530

At the request of Mr. DASCHLE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1530, a bill to provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River.

S. 1588

At the request of Ms. LANDRIEU, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1588, a bill to authorize the National Institute of Environmental Health Sciences to develop multidisciplinary research centers regarding women's health and disease prevention and conduct and coordinate a research program on hormone disruption, and for other purposes.

S. 1609

At the request of Mr. HATCH, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 1609, a bill to make aliens ineligible to receive visas and exclude aliens from admission into the United States for nonpayment of child support.

S. 1630

At the request of Mrs. CLINTON, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1630, a bill to facilitate nationwide availability of 2–1–1 telephone service for information and referral services, and for other purposes.

S. 1647

At the request of Mr. CAMPBELL, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1647, a bill to amend title XVIII of the Social Security Act to provide for direct access to audiologists for medicare beneficiaries, and for other purposes.

S. 1786

At the request of Mr. ALEXANDER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1786, a bill to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act.

S. 1792

At the request of Mr. DOMENICI, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1804

At the request of Mr. BREAUX, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1804, a bill to reauthorize programs relating to sport fishing and recreational boating safety, and for other purposes.

S. 1813

At the request of Mr. LEAHY, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S. 1900

At the request of Mr. LUGAR, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Illinois (Mr. FITZGERALD) were added as cosponsors of S. 1900, a bill to amend the African Growth and Opportunity Act to expand certain trade benefits to eligible sub-Saharan African countries, and for other purposes.

S. 1992

At the request of Mr. KENNEDY, the names of the Senator from Florida (Mr. GRAHAM) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 1992, a bill to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to eliminate privatization of the medicare program, to improve the medicare prescription drug benefit, to repeal health savings accounts, and for other purposes.

S. 1996

At the request of Mr. DASCHLE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1996, a bill to enhance and provide to the Oglada Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program.

S. 2020

At the request of Mrs. BOXER, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2020, a bill to prohibit, consistent with Roe v. Wade, the interference by the government with a woman's right to choose to bear a child or terminate a pregnancy, and for other purposes.

S.J. RES. 26

At the request of Mr. ALLARD, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S.J. Res. 26, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S. CON. RES. 8

At the request of Ms. COLLINS, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. Con. Res. 8, a concurrent resolution designating the second week in May each year as ''National Visiting Nurse Association Week.''

S. CON. RES. 81

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 289

At the request of Mr. DORGAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. Res. 289, a resolution expressing the sense of the Senate with respect to free trade negotiations that could adversely impact the sugar industry of the United States.

AMENDMENT NO. 2311

At the request of Mrs. CLINTON, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of amendment No. 2311 proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2326

At the request of Mr. BINGAMAN, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of amendment No. 2326 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2409

At the request of Mrs. BOXER, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of amendment No. 2409 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2414

At the request of Mr. NICKLES, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of amendment No. 2414 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2416

At the request of Mr. BAYH, the name of the Senator from Rhode Island (Mr.

CHAFEE) was added as a cosponsor of amendment No. 2416 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2427

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2427 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2428

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2428 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2442

At the request of Mr. SARBANES, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of amendment No. 2442 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2482

At the request of Mr. CORZINE, his name was added as a cosponsor of amendment No. 2482 proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2511

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2511 intended to be proposed to S. 1072, 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. MURRAY (for herself, Mr. LEAHY, and Mr. REID):

S. 2068. A bill to enhance and improve benefits for members of the National Guard and Reserves who serve extended periods on active duty, and for other purposes; to the Committee on Finance.

Mrs. MURRAY. Mr. President, I rise this evening to introduce a very important piece of legislation that will support hundreds of thousands of Americans who are making great sacrifices for our country. This bill will enhance the benefits that are offered to the brave men and women of the National Guard and Reserves and their families when they are called to service.

The latest figures from the Pentagon show that more than 194,000 Guard and Reserves are currently serving on active duty. We have come to rely greatly on our Guard and Reserve Forces for extended durations. It is now time that we provide them with the support that is available to our regular services.

Nationwide, we are experiencing the largest activation of Guard and Reserves since the Korean war. In my home State this is the largest activation of these brave men and women since World War II.

Guard and Reserves make up almost 40 percent of the total U.S. force in Iraq. They play a critical role in our operations in Afghanistan, and they support a tremendous number of our homeland security missions.

The Guard's 81st Armor Brigade is sending 3,600 brave Washington State citizens to Iraq in the next few weeks. I had the pleasure of meeting with many of these soldiers and their families in early January. During my visit with these soldiers, I heard many concerns about the well-being of their families who are going to be left to shoulder tremendous responsibilities while they are away. Many were concerned that they would leave before they could help their spouse find affordable child care. Others were concerned that their children would have to go to a new doctor who accepts TRICARE, and that type of change when one parent is overseas and far away can be very scary for a young child.

My visit with the families offered a window into what they are facing as their loved ones serve on extended deployments. Their families were concerned about the loss of income between their spouse's civilian salary and their active-duty salary.

Some of our activated soldiers were in school. Their families were concerned that they would have to begin repaying student loans while their loved ones served in Iraq.

It is vital that Congress take steps to ensure all members of our Armed Forces and their families are taken care of, especially during extended active-duty deployments and upon their return home. Unfortunately, that has not always been the case. Veterans who volunteered or were drafted to serve our country were promised health care and other benefits. When they returned home they found those promises were not kept. In recent years, the administration has barred certain veterans from enrolling in the VA. The President's budget request for this year would require some veterans to pay additional fees for the services they are currently able to receive.

This evening, I am introducing a comprehensive piece of legislation that will minimize the challenges at home when members of the Guard and Reserve leave their jobs, their schools, their homes, and their families to protect our homeland and fight terrorism. This legislation helps families by extending the Family and Medical Leave Act to allow spouses to take time away from their job to put together a single-parent household and prepare for their transition.

My bill will help Guard and Reserve families with children by providing access to child care, especially during times of extended active duty. This provision would allow nonworking spouses with children to work while their spouse is being deployed, making child care more affordable.

Education is a key part of this proposal. I have heard from Guard members who are worried that they had to leave their university to go to Iraq for a year. We have to ensure that when they return to school it will be without penalty, and that their student loans are deferred during their extended deployment.

Several soldiers who work in the high-tech field said to me:

> Eighteen months away from my job in the high tech field means that I will not be ready to go back into my position when I return.

That is why my bill will extend and update the GI Bill benefits for Guard and Reserve to keep better pace with the rising costs of education. This will encourage education and provide a competitive edge for Guard and Reserves when they return home to the private sector.

My proposal will improve health care coverage by providing access to TRICARE for all members of the Guard and Reserves and their families, regardless of employment or insurance status. TRICARE only works if you are in a community that has TRICARE available. Guard and Reserves who are mobilized for extended periods need the option to maintain their private health care plans. So my proposal provides that option and covers their premiums during periods of extended deployment.

Many members of the Guard and Reserves who are mobilized are seeing a huge decrease in their pay while they serve our country on active duty. My proposal ensures pay equity for Federal employees called to duty and provides tax credits to employers to encourage their support of activated Guard and Reserves.

My proposal also reduces the age for Guard and Reserves to receive retirement pay to age 55.

I am very concerned that we are burning up our Guard and Reserve units by placing a serious strain on their families and their finances. These brave men and women need the same kind of support that our regular services have when they are called away from their families and their jobs for extended deployments. By addressing these shortfalls now, we give the Guard and Reserves a valuable tool for recruiting and retaining the best and the brightest soldiers in the world.

This bill tells our Guard and Reserve members that they can serve our country overseas, even on long deployments, and know that their families will be financially secure and able to get child care and health care. Spouses can take time off from work to prepare for a long deployment. In addition, Guard members won't lose their place at a university, and they won't be charged interest or have to repay loans until they resume their studies.

I hope we can pass this bill and do everything we can to lessen the burden

on Americans who are already sacrificing so much for our security. We are asking so much of our Guard and Reserve members and their families. We have an obligation to make it easier for their spouses and children during these extended long deployments.

I hope my colleagues will support this legislation and help us move it quickly through the Senate.

I yield the floor.

By Mr. HAGEL:

S. 2070. A bill to amend the Animal Health Protection Act to direct the Secretary of Agriculture to implement the United States Animal Identification Plan, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. HAGEL. Mr. President, I rise today to introduce legislation to provide the U.S. Department of Agriculture (USDA) the authority to implement the U.S. Animal Identification Plan (USAIP) for livestock, as well as strengthen existing laws that protect against the spread of disease in livestock.

Consumers in the U.S. and around the world must have confidence in our food supply. The discovery of the first case of Bovine Spongiform Encephalopathy (BSE) in the United States has raised serious concerns regarding the effectiveness of current U.S. disease management measures as well as closed U.S. beef markets overseas.

For years there have been efforts to develop a national animal identification plan. The National Identification Task Force was created in 2002. The task force brought together livestock industry representatives with USDA to participate in the development of a comprehensive plan known as the United States Animal Identification Plan (USAIP). The final development and implementation of this plan is needed now to bolster confidence in the U.S. livestock industry.

In a recent briefing regarding the completion of the investigation into the U.S. BSE case, Dr. Ron DeHaven, Chief Veterinary Officer with USDA, referring to the unfound cattle from Canada, was quoted as saying, ''Many of those animals were moved into the United States a number of years ago, and so because of that timeframe some of the paper trail has gotten cold.'' A national animal identification plan would ensure the trail would not go cold in the future.

My legislation will direct USDA to focus its resources on implementing the USAIP for beef and dairy cattle to ensure a disease tracking system is in place in a timely manner. This bill also provides financial assistance to aid in the cost of producer compliance.

In addition, this legislation directs the Food and Drug Administration (FDA) to strengthen the enforcement of current livestock feed ban laws. This measure will help control disease threats to U.S. livestock, provide privacy protection for the information collected and used in the plan, and implement an effective plan for tracking animals.

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. 2070

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 ''United States Animal Identification Plan Implementation Act''.

SEC. 2. ANIMAL IDENTIFICATION PLAN.

Section 10411 of the Animal Health Protection Act (7 U.S.C. 8310) is amended by adding at the end the following:

''(f) ANIMAL IDENTIFICATION PLAN.—

''(1) DEFINITION OF ANIMAL IDENTIFICATION PLAN.—

''(A) IN GENERAL.—The term 'animal identification plan' means the United States Animal Identification Plan developed by the National Animal Identification Development Team.

''(B) INCLUSIONS.—The term 'animal identification plan' includes—

''(i) the operational premises identification allocation system;

''(ii) the operational certification system able to certify State premises and animal number allocation systems;

''(iii) the operational premises repository; and

''(iv) the operational identification database.

''(2) IMPLEMENTATION PRIORITY.—Subject to the availability of appropriations and cost-share agreements, the Secretary shall implement the animal identification plan—

''(A) for beef and dairy cattle that are at least 30 months old on the date of enactment of this subsection, not later than 60 days after the date of enactment of this subsection;

''(B) for all other beef and dairy cattle, not later than 90 days after the date of the enactment of this subsection;

''(C) for all other ruminate livestock, not later than 180 days after the date of enactment of this subsection; and

''(D) for all other livestock, not later than 1 year after the date of enactment of this subsection.

''(3) PARTICIPATION BY STATE AND THIRD-PARTY VENDORS.—The Secretary may enter into agreements to collect information for the animal identification plan with States or third-party vendors that meet the requirements of the animal identification plan.

''(4) CONFIDENTIALITY OF INFORMATION.—

''(A) IN GENERAL.—In implementing the animal identification plan, the Secretary shall ensure the privacy of producers by—

''(i) collecting only data necessary to establish and maintain the animal identification plan; and

''(ii) maintaining the confidentiality of information collected from producers.

''(B) NONAPPLICATION OF FOIA.—Section 552 of title 5, United States Code, shall not apply to the animal identification plan.

''(C) APPLICATION OF PRIVACY ACT.—Section 552a of title 5, United States Code, shall apply to any information collected to implement this subsection.

''(5) FINANCIAL ASSISTANCE.—The Secretary may provide financial assistance to producers to assist the producers in complying with the animal identification plan.

''(6) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There is authorized to be appropriated to carry out this subsection $50,000,000 for fiscal year 2004, of which at least $25,000,000 shall be available to carry out paragraph (5).

''(B) USE OF COMMODITY CREDIT CORPORATION FUNDS.—Subject to subparagraph (C), if less than $50,000,000 is appropriated for fiscal year 2004, the Secretary may use up to $50,000,000 of the funds of the Commodity Credit Corporation to carry out this subsection.

''(C) LIMITATION ON AMOUNT OF FUNDS.—No more than $50,000,000 may be used to carry out this subsection.''.

SEC. 3. RUMINANT FEED BAN.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall—

(1) monitor the implementation of section 589.2000 of title 21, Code of Federal Regulations (relating to animal proteins prohibited in ruminant feed);

(2) conduct an annual formal evaluation of the effectiveness and implementation of that section; and

(3) submit to Congress an annual report that describes the formal evaluation.

(b) ENFORCEMENT PLAN.—

(1) IN GENERAL.—The Secretary shall develop and implement a plan for enforcing section 589.2000 of title 21, Code of Federal Regulations.

(2) INCLUSIONS.—The plan shall include—

(A) a hierarchy of enforcement actions to be taken;

(B) a timeframe to allow a person subject to section 589.2000 of title 21, Code of Federal Regulations, to correct violations; and

(C) a timeframe for subsequent inspections to confirm that violations have been corrected.

By Mr. KOHL (for himself and Mr. KENNEDY):

S. 2071. A bill to expand the definition of immediate relative for purposes of the Immigration and Nationality Act; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today with Senator KENNEDY to introduce the Family Reunification Act, a measure designed to remedy a regrettable injustice in our immigration laws. A minor oversight in the law has led to an unfortunate, and likely unintended, consequence. Parents of U.S. citizens are currently able to enter the country as legal permanent residents, but our laws do not permit their minor children to join them. Simply put, the Family Reunification Act will close this loophole by including the minor siblings of U.S. citizens in the definition of ''immediate relative.'' This legislation will ensure that our immigration laws can better accomplish one of the most important policy goals behind them—the goal of strengthening the family unit.

Congress took an important first step in promoting family reunification when it enacted the Immigration and Nationality Act. By qualifying as ''immediate relatives,'' this law currently offers parents, spouses and children of U.S. citizens the ability to obtain immigrant visas to enter this country legally.

This we can all agree is good immigration policy. Unfortunately, a

''glitch'' in this law has put numerous families in an uncomfortable predicament. One of these unlucky families lives in my home Sate of Wisconsin. Effiong and Ekom Okon, both U.S. citizens by birth and graduates of the University of Wisconsin-Madison, requested that their parents be admitted to the United States from Nigeria as ''immediate relatives.'' The law clearly allows for this. Their father, Leo Okon, has already joined them in Wisconsin, and their mother, Grace, is currently in possession of an immigrant visa. However, Grace is unable to join her husband and sons in the United States because her six-year-old daughter, Daramfon, does not qualify as an ''immediate relative'' under current immigration law. Because it would be unthinkable for her to abandon her small child, Grace has been forced to stay behind in Nigeria, separated from the rest of her family.

This family is truly an American success story, one of first-generation citizens graduating from a top University. They want to continue to contribute to society and want to bring their family with them. Unfortunately, current immigration law only permits some members of their immediate family to join them, but not all. This is clearly wrong.

It is difficult to determine the scope of this problem. Because minor siblings do not qualify for visas, the Department of Homeland Security does not keep track of how many families have been adversely affected. However, DHS employees have assured us that the Okons are not unique. In fact, this is an all too common occurrence. If only one family suffers because of this loophole, changes must be made. The fact that there have been numerous cases demands changes now.

Many parts of our immigration laws are outdated, unfair, and in need of repair. The definition of ''immediate relative'' is no different. Congress' intent when it grated ''immediate relatives'' the right to obtain immigrant visas was to promote family reunification, but the unfortunate oversight highlighted has interfered with many families' opportunities to do just that. The legislation introduced today would expand the definition of ''immediate relatives'' to include the minor siblings of U.S. citizens. By doing so, we can truly provide these families with the ability to reunite and the chance to take advantage of the many great opportunities our country has to offer. This is a simple and modest solution to an unthinkable problem that too many families have already had to face.

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. 2071

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IMMEDIATE RELATIVE DEFINITION.

Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by inserting after ''at least 21 years of age.'' the following: ''In the case of a parent of a citizen of the United States who has a child (as defined in section 101(b)(1)), the child shall be considered, for purposes of this subsection, an immediate relative if accompanying or following to join the parent.''.

By Mr. CRAIG.

S. 2072. A bill to amend the Internal Revenue Code of 1986 to allow a non-refundable tax credit for elder care expenses; to the Committee on Finance.

Mr. CRAIG. Mr. President, today I am introducing the Senior Elder Care Relief and Empowerment Act—the SECURE Act. The SECURE Act provides eligible taxpayers with a non-refundable tax credit equal to 50 percent of qualified expenses incurred on behalf of senior citizens above a $1,000 spending floor.

The Senate Special Committee on Aging has held several hearings on different facets of the growing long-term care crisis in this country. A major concern of mine is that the Federal long-term care policy mix may not have the right incentives—especially when it comes to the tough choices faced by families who want to care for their frail and aging relatives.

Earlier this week, we held a hearing in the Senate Special Committee on Aging on a growing issue of national importance—the issue of family caregiving for America's seniors.

Witnesses at the hearing highlighted the emotional stress and financial challenges faced by family caregivers of aging and vulnerable relatives; and testified favorably about the SECURE Act. Trudy Elliott, a witness at the hearing from North Idaho, talked about the stress and financial challenges she and her husband faced while caring for her mother, sister, and father. Her testimony was very moving. Mrs. Elliott, who also works for a company in the home health field, testified that her experience was not unique. More and more families are facing the stress and financial difficulties that come with caring for their aging parents.

It is critical to note that families, not government, provide 80 percent of long-term care for older persons in the United States. This is an enormous strength of our long-term care system. The U.S. Administration on Aging reports that about 22 million people serve as informal caregivers for seniors with at least one limitation on their activities of daily living.

These caregivers often face extreme stress and financial burden—especially those we call the sandwich generation. The sandwich generation refers to those sandwiched between caring for their aging parents and caring for their own children.

It is difficult for families to balance caring for children and saving or paying for college, while at the same time struggling with financing care for frail and aging parents.

The SECURE Act should not preclude seniors or those near retirement from purchasing long-term care insurance. The Act provides tax relief for high-risk seniors who cannot qualify for long-term care insurance policies.

For many families, the nursing home is the only solution for providing long-term care, and that can be a good choice. For other families, keeping aging and vulnerable relatives in their own home or in the caregiver's home makes sense.

An that is why I am introducing the SECURE Act. Families facing high levels of stress and eldercare expenses deserve tax relief as they freely care for their frail and aging parents.

We also heard from witnesses at the Aging Committee hearing that the SECURE Act will increase the eldercare choices available to families and has the potential to reduce the number of seniors forced to spend down their nest-egg in order to qualify for Medicaid services.

Family caregiving for aging and vulnerable relatives requires a flexible national response to ensure seniors and their families have the most appropriate high quality choices.

I invite my colleagues to cosponsor this compassionate legislation. I ask unanimous consent that the text of the bill and a brief description be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 2072

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 ''Senior Elder Care Relief and Empowerment (SECURE) Act''.

SEC. 2. CREDIT FOR ELDER CARE.

(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. ELDER CARE EXPENSES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter 50 percent of so much of the qualified elder care expenses paid or incurred by the taxpayer with respect to each qualified senior citizen as exceeds $1,000.

''(b) QUALIFIED SENIOR CITIZEN.—For purposes of this section, the term 'qualified senior citizen' means an individual—

''(1) who has attained normal retirement age (as determined under section 216 of the Social Security Act) before the close of the taxable year,

''(2) who is a chronically ill individual (within the meaning of section 7702B(c)(2)(B)), and

''(3) who is—

''(A) the taxpayer,

''(B) a family member (within the meaning of section 529(e)(2)) of the taxpayer, or

''(C) a dependent (within the meaning of section 152) of the taxpayer.

''(c) QUALIFIED ELDER CARE EXPENSES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified elder care expenses' means expenses paid or incurred by the taxpayer with respect to the qualified senior citizen for—

''(A) qualified long-term care services (as defined in section 7702B(c)),

''(B) respite care, or

''(C) adult day care.

''(2) EXCEPTIONS.—The term 'qualified elder care expenses' does not include—

''(A) any expense to the extent such expense is compensated for by insurance or otherwise, and

''(B) any expense paid to a nursing facility (as defined in section 1919 of the Social Security Act).

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—

''(1) ADULT DAY CARE.—The term 'adult day care' means care provided for a qualified senior citizen through a structured, community-based group program which provides health, social, and other related support services on a less than 16-hour per day basis.

''(2) RESPITE CARE.—The term 'respite care' means planned or emergency care provided to a qualified senior citizen in order to provide temporary relief to a caregiver of such senior citizen.

''(3) MARRIED INDIVIDUALS.—Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section.

''(4) NO DOUBLE BENEFIT.—No deduction or other credit under this chapter shall take into account any expense taken into account for purposes of determining the credit under this section.

''(5) IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO SERVICE PROVIDER.—No credit shall be allowed under subsection (a) for any amount paid to any person unless—

''(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

''(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

''(6) IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO QUALIFIED SENIOR CITIZENS.—No credit shall be allowed under this section with respect to any qualified senior citizen unless the TIN of such senior citizen is included on the return claiming the credit.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 6213(g)(2)(H) (relating to mathematical or clerical error) is amended by inserting '', section 25C (relating to elder care expenses),'' after ''employment)''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Elder care expenses.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred in taxable years beginning after December 31, 2003.

SENIOR ELDER CARE RELIEF AND EMPOWERMENT (SECURE) ACT

How is the tax credit structured?

50% tax credit rate for qualified expenses for elder care provided to a qualified senior citizen with long-term care needs, for all qualified expenses above a ''floor'' of $1,000 already provided by the taxpayer (for example: $500 credit on first $2,000 spent; $10,000 credit on first $21,000 spent)

What are the qualifications for beneficiaries of the tax credit?

Must have reached at least normal retirement age under Social Security (currently age 65), Certification by a licensed physican that the cared-for senior is unable to perform at least two basic activities of daily living

Who can claim the credit?

Senior for his/her own care, Taxpaying family member, Any taxpaying family claiming the cared-for senior as a dependent

What are the qualified expenses?

Un-reimbursable costs (those not covered by Medicare or other insurance), Physical assistance with essential daily activities to prevent injury, Long-term care expenses including normal household services, Architectural expenses necessary to modify the senior's residence, Respite care, Adult daycare, Assisted living services (non-housing related expenses), Independent living, Home care, Home health care.

By Mr. REID (for himself, Mrs. LINCOLN, and Mr. BREAUX):

S. 2075. A bill to amend title III of the Public Health Service Act to include each year of fellowship training in geriatric medicine or geriatric psychiatry as a year of obligated service under the National Health Corps Loan Repayment Program; to the Committee on Health, Education, Labor, and Pensions.

Mr. REID. Mr. President, as our Nation's 76 million Baby Boomers near retirement age, the number of Americans over age 65 will double to 70 million—one-fifth of the population. Americans older than 85 represent the fastest growing segment of this population and membership in this once exclusive demographic group is projected to grow from four million Americans today to an estimated 19 million by 2050.

Unfortunately, our health care system is ill prepared to handle the strain of this enormous senior population, largely because we have a critical shortage of geriatricians. Fewer than 9,000 geriatricians practice in the U.S., far below the 20,000 or more needed to effectively care for the Nation's booming population of seniors. Ironically, the number of geriatricians is expected to shrink as many of these doctors retire at the same time baby boomers start qualifying for Medicare in large numbers.

America must plan for the burdens the baby boomers demographic shift will place on our health care system and health care providers. Our first step is ensuring the country has an adequate number of well-trained geriatricians.

I first introduced legislation to address the national shortage of geriatricians during the 105th Congress. While I am encouraged that greater attention has been focused on this issue, little has been accomplished to improve the shortage of geriatricians.

Today, I am re-introducing legislation that will encourage more doctors to become certified in geriatrics. The Geriatricians Loan Forgiveness Act would forgive $20,000 of education debt incurred by medical students for each year of advanced training required to obtain a certificate of added qualifications in geriatric medicine or psychiatry.

Geriatric medicine is the foundation of a comprehensive health plan for our most vulnerable seniors. Geriatrics, by focusing on assessment and care coordination, promotes preventive care and improves patients' quality of life by allowing them greater independence and eliminating unnecessary and costly trips to the hospital or institutions. But this kind of specialized care is complicated and demanding. Many doctors inclined to study and practice geriatric medicine are dissuaded from doing so because treating the elderly takes more time and carries financial disincentives for doctors.

Medical training takes time, so we need to lay the groundwork now to have enough qualified geriatricians in place in ten years from now. This legislation is a commonsense approach and cost-effective investment. We must take these steps today to meet our needs for tomorrow.

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. 2075

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 ''Geriatricians Loan Forgiveness Act of 2004''.

SEC. 2. NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM.

(a) IN GENERAL.—Section 338B(g) of the Public Health Service Act (42 U.S.C. 254l–1(g)) is amended by adding at the end the following:

''(5) OBLIGATED SERVICE.—

''(A) IN GENERAL.—For purposes of this section, each year of training in geriatric medicine or geriatric psychiatry that is required in order to obtain a certificate of added qualification in geriatric medicine or geriatric psychiatry shall be deemed to be a year of obligated service.

''(B) LIMITATIONS.—

''(i) PAYMENTS.—Notwithstanding the first sentence of paragraph (2)(A), for the year of obligated service described in subparagraph (A), the Secretary may pay up to $20,000 on behalf of the individual for loans described in paragraph (1).

''(ii) INDIVIDUALS.—The number of fellowship years in geriatric medicine or geriatric psychiatry that are deemed to be a year of obligated service under this section shall not exceed 400 in any calendar year.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to applications submitted to the Secretary of Health and Human Services under section 338B of the Public Health Service Act (42 U.S.C. 254l–1) on or after 1 year after the date of enactment of this Act.

(2) FIRST YEAR OF PROGRAM.—For the period beginning on the date of enactment of this Act and ending on December 31 of the

calendar year in which such enactment occurs, the Secretary of Health and Human Services shall ratably reduce the maximum number of fellowship years in geriatric medicine or geriatric psychiatry that may be deemed to be a year of obligated service under section 338B(g)(5)(B)(ii) of the Public Health Service Act (42 U.S.C. 254l–1(g)(5)(B)(ii)) (as added by subsection (a)) to reflect the portion of the year that the amendment made by subsection (a) is in effect.

By Mr. BAUCUS:

S. 2076. A bill to amend title XI of the Social Security Act to provide direct congressional access to the office of the Chief Actuary in the Centers for Medicare & Medicated Services; to the Committee on Finance.

Mr BAUCUS. Mr. President, I rise today to introduce the Congressional Access to the CMS Chief Actuary Act of 2004.

This legislation provides Congress with greater access to cost estimates and other data produced and collected by the Center for Medicare and Medicaid Services (CMS) Office of the Actuary. The Office of the Actuary is a group of about 50 actuaries, economists, and other health professionals who provide non-partisan analyses of Medicare and other federally financed health care programs.

Recently we learned that the administration's cost estimate of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 is $534 billion over 10 years, nearly $140 billion higher than the estimates produced by the Congressional Budget Office (CBO). Contrary to statements by some members of the administration, Congress did not have this estimate when it voted on this bill.

It would be disingenuous of me to state that the higher cost estimate is my biggest concern. I have voted in the past for prescription drug bills estimated to cost more than $534 billion. And in the conference negotiations on this bill, I urged my colleagues to make changes until the final hours of the negotiations that would have added additional costs to the legislation.

My greatest concern with the higher estimate is one of transparency. More specifically, I am concerned about the degree to which access to the CMS career actuaries has been restricted by this administration. Had Congress been able to freely communicate with the career actuaries during last year's Medicare negotiations, it would not have been surprised by the higher estimates. Moreover, I believe that input from the CMS actuaries could have informed the conferees and perhaps improved certain aspects of the bill in a positive way. And why shouldn't Congress have access to all available information on legislation under consideration?

The restrictions placed on congressional access to the CMS actuary is in clear violation of the report language that was included in the Balanced Budget Act of 1997 (BBA 97). The 1997 BBA established the Office of the Actuary within CMS, which was then called the Health Care Financing Administration. Report language accompanying the legislation stated, ''The independence of the Office of the Actuary with respect to providing assistance to the Congress is vital. The process of monitoring, updating, and reforming the Medicare and Medicaid programs is greatly enhanced by the free flow of actuarial information from the Office of the Actuary to the committees of jurisdiction in the Congress.''

While Congress intended that the Office of the Actuary would provide it with cost and other data as requested, a free flow of information has not occurred—particularly over the past year. I requested, as well as several of my colleagues, information from the Office of Actuary throughout last year's Medicare deliberations; however, our requests were unfulfilled. I do not fault the professionals in the Office of the Actuary. Rather, I believe the lack of response was the result of inappropriate restrictions placed on the office by administration political officials.

In order for Congress to craft good legislation, we need access to the most up-to-date actuarial and cost information. CBO will always remain Congress's official score-keeper. But a second independent assessment is critical, particularly if the two estimates differ, as was the case of the recent Medicare legislation. Congress needs to understand the reasons for the differences, and only then can it make fully-informed decisions. And again, I ask, why shouldn't Congress have access to all available information on legislation under consideration?

The legislation that I introduce today is very simple. It codifies the 1997 BBA report language to require that Congress have direct and open access to information and estimates produced by the independent CMS career actuaries. The bill's purpose is to improve Congress's ability to write good legislation and to make well-informed decisions.

I want to be clear. The administration's higher cost-estimate does not change my support of this Medicare legislation. I continue to be a proud supporter of the bill.

But I have also pledged to work to improve its flaws and to address its shortcomings. Any efforts to improve this bill will require vigilant oversight of its implementation and will require having access to the latest information about the program's participation, payment, and costs. The CMS career actuaries will play a fundamental role in the data collection. The administration's past practices of restricting and censoring this information cannot continue.

This bill is about improving transparency in government and decision making. I urge all of my colleagues to support this 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. 2076

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 ''Congressional Access to the CMS Chief Actuary Act of 2004''.

SEC. 2. DIRECT CONGRESSIONAL ACCESS TO THE OFFICE OF THE CHIEF ACTUARY IN THE CENTERS FOR MEDICARE & MEDICAID SERVICES.

(a) FINDINGS.—Congress finds the following:

(1) In creating the Office of the Actuary in the Health Care Financing Administration (now known as the Centers for Medicare & Medicaid Services) with the enactment of the Balanced Budget Act of 1997, Congress intended that the Office would provide independent advice and analysis to assist in the development of health care legislation.

(2) While the Congressional Budget Office would continue to serve as the official source for cost estimates for Congress, Congress created the Office of the Actuary in order to have—

(A) an additional, independent source for estimates in the development of health care legislation; and

(B) access to more detailed actuarial data and assumptions related to program participation, payments, and costs.

(3) While the joint explanatory statement of the committee of conference contained in the conference report for the Balance Budget Act of 1997 provided a clear statement of the Congressional intent described in paragraphs (1) and (2), Congressional access to the Office of the Actuary has been inappropriately restricted over the past year.

(b) ACCESS.—Section 1117(b) of the Social Security Act (42 U.S.C. 1317(b)), as amended by section 900(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173), is amended by adding at the end the following new paragraph:

''(4)(A) In exercising the duties of the office of the Chief Actuary, the Chief Actuary shall provide the committees of jurisdiction of Congress with independent counsel and technical assistance with respect to the programs under titles XVIII, XIX, and XXI.

''(B) The Chief Actuary may directly provide Congress with reports, comments on, and estimates of, the financial effects of potential legislation, and other actuarial information related to the programs described in subparagraph (A). No officer or agency of the United States may require the Chief Actuary to submit to any officer or agency of the United States for approval, comments, or review, prior to the provision to Congress of such reports, comments, estimates, or other information.''.

By Ms. MIKULSKI (for herself, Mr. SARBANES, Mr. HATCH, and Mr. BIDEN):

S. 2081. A bill to amend the Office of National Drug Control Policy Act Reauthorization Act of 1998 to ensure that adequate funding is provided for certain high intensity drug trafficking areas; to the Committee on the Judiciary.

Ms. MIKULSKI. Mr. President, today I rise to introduce legislation which will help America's families who are fighting to drive drugs and violence out of their communities.

The Dawson Family Community Protection Act of 2004 asks the Federal Government to do its fair share by devoting some of its drug fighting resources to communities with high intensity drug trafficking and severe safety concerns. That means dedicating much needed resources to help communities fight the infiltration of drugs and the drug dealers that plague their communities and threaten the safety of their children.

This bill is named in memory of a heroic Baltimore family—the Dawsons—whose active role in trying to rid their neighborhood of drugs and violence cost them their lives. Carnell and Angela Dawson lived in the community of Oliver in East Baltimore and raised five children there.

Every day Angela, known as ''Angel,'' walked her children to school, she made sure that they only rode their bikes on the sidewalk so they would be safe. Her husband, Carnell, worked hard as a construction worker to provide for his family. Both parents were devoted to their children and wanted to make a better life for them.

The house they lived in on the corner of N. Eden Street made Angel nervous. It had too many windows and she was scared that a stray bullet would come in and harm one of her children. The street also worried Angel. There were lots of young teens dealing drugs. She wanted the drugs out of her neighborhood, away from her children and away from all the neighbors' children. She fought every day to make that happen, calling the police when she saw dealers, or violence on her block. She was persistent and the neighbors knew it. They called her a great mother—''someone who stood up for what she believed in.'' Sadly, that persistence and those beliefs cost her and her family their lives.

Angel had repeatedly called the police in September of 2002 to report drug activity. Then on October 3—someone threw two Molotov cocktails through the kitchen window of their house—causing a fire but no injuries. They were sending a message. Two weeks later that message was unmistakable as someone broke through their front door and poured gasoline throughout the first floor of their house and lit a match. Within minutes the house was in flames and it was impossible to escape. Although fire fighters arrived almost immediately—they could not save the family. Angel and five of her children had perished and her husband Carnell had jumped from the second story with burns all over his body—he survived only a week in the hospital.

Many in the neighborhood thought it was the final message.

The Dawsons are the kind of neighbors we all would want. They cared about the community and wanted to make it better and safer. They represent brave families all over America who are trying to take back their neighborhoods, who have worked with law enforcement and their neighbors to make their communities safer.

Too many of these families have had to face threats and retaliation and sadly even murder in their attempt to help their loved ones and neighbors. They work hard, send their kids to school to get an education and play by the rules—yet they live in communities that are unsafe because they are infested with drugs and drug dealers.

We need to get assistance to these communities, as they are working hard to make life better, they need the resources of law enforcement and government to make that a reality. We have to help communities that are trying to help themselves, communities that are trying get rid of drugs, rehabilitate and educate drug dealers and most importantly end violence and protect their neighborhood children.

That is why today, I join with my colleagues, Senator SARBANES, HATCH and BIDEN in introducing this legislation that provides $5 million to high intensity drug traffic areas with severe safety and illegal drug distribution problems—to support communities that are affected by drug trafficking and to encourage their cooperation with local, State and Federal law enforcement officials.

These funds also help to protect families that cooperate, families that report crimes and drugs and families that seek to make a difference in their communities. These resources help law enforcement provide witness protection and address safety issues in these communities. The funding only goes to neighborhoods—like the East Baltimore neighborhood that the Dawson's lived in—with severe neighborhood safety and illegal drug distribution problems.

For these communities it's time for the Federal Government to step up and do more, especially when average citizens put their lives on the line every day trying to stop the violence and crime that comes when the illegal drug trade invades their neighborhoods.

This bill will give citizens and law enforcement the tools they need to make sure the community is safe and those doing the reporting are protected. In honor of the Dawson family, I ask my colleagues to support 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. 2081

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 ''Dawson Family Community Protection Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In the early morning hours of October 16, 2002, the home of Carnell and Angela Dawson was firebombed in apparent retaliation for Mrs. Dawson's notification of police about persistent drug distribution activity in their East Baltimore City neighborhood.

(2) The arson claimed the lives of Mr. and Mrs. Dawson and their 5 young children, aged 9 to 14.

(3) The horrific murder of the Dawson family is a stark example of domestic narco-terrorism.

(4) In all phases of counter-narcotics law enforcement—from prevention to investigation to prosecution to reentry—the voluntary cooperation of ordinary citizens is a critical component.

(5) Voluntary cooperation is difficult for law enforcement officials to obtain when citizens feel that cooperation carries the risk of violent retaliation by illegal drug trafficking organizations and their affiliates.

(6) Public confidence that law enforcement is doing all it can to make communities safe is a prerequisite for voluntary cooperation among people who may be subject to intimidation or reprisal (or both).

(7) Witness protection programs are insufficient on their own to provide security because many individuals and families who strive every day to make distressed neighborhoods livable for their children, other relatives, and neighbors will resist or refuse offers of relocation by local, State, and Federal prosecutorial agencies and because, moreover, the continued presence of strong individuals and families is critical to preserving and strengthening the social fabric in such communities.

(8) Where (as in certain sections of Baltimore City) interstate trafficking of illegal drugs has severe ancillary local consequences within areas designated as High Intensity Drug Trafficking Areas, it is important that supplementary HIDTA Program funds be committed to support initiatives aimed at making the affected communities safe for the residents of those communities and encouraging their cooperation with local, State, and Federal law enforcement efforts to combat illegal drug trafficking.

SEC. 3. FUNDING FOR CERTAIN HIGH INTENSITY DRUG TRAFFICKING AREAS.

(a) IN GENERAL.—Section 707(d) of the Office of National Drug Control Policy Act Reauthorization Act of 1998 (21 U.S.C. 1706(d); Public Law 105–277; 112 Stat. 2681-670) is amended to read as follows:

''(d) AUTHORIZATION AND USE OF FUNDS.—

''(1) AUTHORIZATION.—There are authorized to be appropriated $5,000,000 to be used in high intensity drug trafficking areas with severe neighborhood safety and illegal drug distribution problems to—

''(A) ensure the safety of neighborhoods and the protection of communities, including the prevention of the intimidation of potential witnesses of illegal drug distribution and related activities; and

''(B) combat illegal drug trafficking through such methods as the Director considers appropriate, such as establishing or operating (or both) a toll-free telephone hotline for use by the public to provide information about illegal drug-related activities.

''(2) USE OF FUNDS.—The Director shall ensure that no Federal funds appropriated for the High Intensity Drug Trafficking Program are expended for the establishment or expansion of drug treatment programs.''.

By Mrs. BOXER:

S. 2083. A bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, according to a Kaiser Family Foundation and Harvard School of Public Health survey of non-elderly Americans with private health insurance, one-half reported that they had a problem with their health insurance plans in the previous year. They cited delays and denials of coverage or care as their two most common problems. They also said they worried that if they became sick, their health plans would be more concerned about saving money than providing the best treatment. For those in managed care plans, such as HMOs, over two-thirds had this concern.

And they have good reason to be concerned. Let me tell you about two of the many people, who were hurt when HMO decided it needed to save money. Ruby Calad had a hysterectomy and her doctor recommended that she stay in the hospital longer than a day. Cigna, Ruby's insurance company said one day was enough. So Ruby went home, but she was soon in the emergency room because she had developed serious complications. Had Ruby been able to stay in the hospital longer, as recommended by her doctor, this would not have happened.

Juan Davila suffers from diabetes and arthritis. His doctor prescribed VIOXX for his arthritis because it had a lower rate of bleeding and ulcers than drugs on the formulary developed by Aetna. But instead of approving the VIOXX, Juan was required to enter a step program and try two other medications before VIOXX could be approved. He was given naprosyn—a cheaper drug—and three weeks later was rushed to the hospital. He had developed bleeding ulcers, which caused a heart attack and internal bleeding. Juan survived but now cannot take any pain medication that is absorbed by the stomach.

These examples show why medical decisions should be made by doctors, not HMO bureaucrats, and in 2001, the Senate, in a bipartisan vote of 59–36, passed S. 1052, the Bipartisan Patient Protection Act to make sure that happened. Yet, intransigence from the House leadership and the White House prevented that bill from becoming law. Nearly 3 years later, we still have not acted. So, today, I am introducing the exact same bipartisan bill that passed in the Senate in 2001.

This bill provides comprehensive protections to all Americans in all health plans. It says to all Americans who have health insurance, you have rights and protections. It says to HMOs, you have responsibilities and will be held accountable for your wrongful and harmful actions.

This bill ensures that patients have the right to have medical decisions made by their doctors and not HMO bureaucrats. Patients will have the right to see a specialist and go to the closest emergency room for treatment. They will be able to keep the same doctor throughout their medical treatment and appeal adverse claim decisions to an independent reviewer. And if they are injured by a decision made by the HMO, they will have the right to hold their HMO accountable in a court.

A meaningful patients bill of rights is long overdue. I urge my colleagues to support this legislation.

By Mr. ALEXANDER (for himself, Mr. CARPER, Mr. DORGAN, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INOUYE, Mr. LAUTENBERG, Mr. ROCKEFELLER, and Mr. VOINOVICH):

S. 2084. A bill to revive and extend the Internet Tax Freedom Act for 2 years, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ALEXANDER. Mr. President, 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. 2084

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 ''Internet Tax Ban Extension and Improvement Act''.

SEC. 2. 2-YEAR EXTENSION OF MORATORIUM.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 nt) is amended—

(1) by striking ''2003—'' and inserting ''2005:'';

(2) by striking paragraph (1) and inserting the following:

''(1) Taxes on Internet access.''; and

(3) by striking ''multiple'' in paragraph (2) and inserting ''Multiple''.

SEC. 3. EXCEPTIONS FOR CERTAIN TAXES.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. EXCEPTIONS FOR CERTAIN TAXES.

''(a) PRE-OCTOBER, 1998, TAXES.—Section 1101(a) does not apply to a tax on Internet access (as that term was defined in section 1104(5) of this Act as that section was in effect on the day before the date of enactment of the Internet Tag Ban Extension and Improvement Act) that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tag to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tag on charges for Internet access.

''(b) TAXES ON TELECOMMUNICATIONS SERVICES.—Section 1101 (a) does not apply to a tag on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tag was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access service.''.

SEC. 4. CHANGE IN DEFINITIONS OF INTERNET ACCESS SERVICE.

(a) IN GENERAL.—Paragraph (3)(D) of section 1101(e) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2)(B)(i) of section 1105 of that Act, as redesignated by subsection (a), is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(2) INTERNET ACCESS.—Paragraph (5) of section 1105 of that Act, as redesignated by subsection (a), is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(3) Paragraph (10) of section 1105 of that Act, as redesignated by subsection (a), is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

SEC. 5. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

SEC. 6. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect November 1, 2003.

Mr. ROCKEFELLER. Mr. President, I am pleased to cosponsor legislation introduced today that will reinstate a moratorium on State and local taxation of access to the Internet. Senators ALEXANDER and CARPER have worked very hard to craft legislation that will protect Americans from being taxed for using the Internet, while still respecting the States' need to raise revenue from traditional telecommunications taxes. As a fellow former Governor, I have been pleased to join them in this effort and hope that all of my colleagues who have supported a moratorium on taxation of Internet access will support this bill.

Until last fall, there was a moratorium in place prohibiting taxation of Internet access. Unfortunately, that lapsed before Congress was able to craft an extension. One of the reasons that extending the moratorium has been difficult is that we want to apply the lessons learned over the last few years. For example, the previous moratorium was not technology-neutral. That is, people who accessed the Internet using a DSL connection were not always treated the same as those who used dial-up service or a cable modem. This was clearly an unintended consequence of the way that the previous legislation was drafted. In addition, over the last few years, we have seen many States struggle with enormous budget deficits. Recognizing that a downturn in the economy can compromise a state's ability to provide vital services, including schools, firefighters, and police officers, we do not want to undermine any state's revenue base.

With these lessons in mind, Senators ALEXANDER, CARPER and others have crafted an extension of the previous moratorium that would ensure that no States impose new taxes on Internet access. The legislation specifically requires that all technologies be treated equally. And because the moratorium is limited to 2 years, it ensures that Congress will revisit the issue periodically as technologies develop and circumstances change.

As a former Governor, I do not take lightly any Federal action that limits the options available to local and State elected officials I recognize how hard it is to balance a State budget and am only willing to support a moratorium on Internet access taxes because I believe that we are dealing with a unique new service. The Internet has the power to connect Americans as the radio, telephone, and television did for previous generations. By sending e-mails, telecommuting, or banking online, Americans are communicating in a new way that makes our economy more productive and enhances our quality of life. If sparing Internet access from taxation increasing the ability of low and moderate income Americans to join the technology revolution, then it is certainly a worthy public policy goal.

Now, Senators ALLEN and WYDEN have offered an alternative approach. They have proposed legislation that would permanently bar States ad cities from taxing Internet access, and they have defined the service broadly that many experts believe it will undermine some telecommunications taxes on which States currently depend. I am not interested in providing enormous tax breaks to the telecommunications industry, and so I oppose their approach. Taxes that businesses currently pay to access the Internet backbone are reasonable costs of doing business. I hope that my colleagues will not be intimidated by claims that those of us who oppose tax breaks for telecommuncations companies actually want to tax people's e-mails. That is a false argument, and anyone who resorts to it is surely trying to avoid the difficult issues that are addressed by the bill introduced today by Senators ALEXANDER and CARPER.

I would like to make one final point to my colleagues, and that is about fallibility. Every day we get fresh evidence that things are not always as they seemed and that we do not, in fact, know everything we thought we knew. If fallibility is part of being human, then surely it is part of any legislative body. If the moratorium that Congress had imposed 5 years ago had been permanent, then we would have had a difficult time reopening the issue to address the fact that certain technologies were not protected under the act. We ought not make that mistake now by thinking that we can accurately foresee the exciting technological developments on the horizon. It is appropriate for Congress to revisit this issue in two years, as the Alexander-Carper proposal allows.

I hope that all of my colleagues will join me in support of a new temporary moratorium on Internet access taxes. Enacting this legislation quickly will ensure that Americans are not hit with any taxes when they try to log on.

By Mr. REID (for himself and Mr. ENSIGN):

S. 2085. A bill to modify the requirements of the land conveyance to the University of Nevada at Las Vegas Research Foundation; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today for myself and Senator ENSIGN to introduce the University of Nevada at Las Vegas Research Foundation Reinvestment Act, which enhances the long-term viability of the University of Nevada at Las Vegas by allowing proceeds from leases of the University of Nevada at Las Vegas Research Foundation property to be reinvested.

Mr. President, through provisions of the Southern Nevada Public Land Management Act of 1998, the Clark County Department of Aviation acquired land that was formerly owned by the Federal Government. A subsequent law, the Clark County Conservation of Public Land and Natural Resources Act of 2002, transferred this land to the University of Las Vegas Research Foundation for construction of a research park and technology center.

Under current law, only 10 percent of the proceeds from the sale, lease, or conveyance of this land may be reinvested. This restriction hinders efforts to promote research and development at the research park.

Mr. President, the bill that I am introducing today amends the Clark County Conservation of Public Land and Natural Resources Act of 2002 to allow the proceeds of the Foundation's research park leases to be used to carry out the foundation's research mission.

The foundation's research park and technology center in the greater Las Vegas area will enhance the research mission of the university, increasing the potential for the high-tech industry and entrepreneurship in the State. It provides the public with opportunities for high-tech education and research, and at the same time provides the State with opportunities for competition and economic development in the high-tech field. It is imperative that sufficient funds are always available to maintain and enhance the center.

Mr. President, 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. 2085

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 ''University of Nevada at Las Vegas Research Foundation Reinvestment Act''.

SEC. 2. CONVEYANCE TO THE UNIVERSITY OF NEVADA AT LAS VEGAS RESEARCH FOUNDATION.

Section 702(b)(2) of Public Law 107–282 (116 Stat. 2013) is amended by striking ''that if the land'' and all that follows through ''conveyed by the Foundation.'' and inserting the following: ''that provides that (except in a case in which the gross proceeds of a sale, lease, or conveyance are provided to the Foundation to carry out the purposes for which the Foundation was established), if the land described in paragraph (3) is sold, leased, or otherwise conveyed by the Foundation—''.

By Mr. GRAHAM of Florida:

S. 2087. A bill to amend the Internal Revenue Code of 1986 to expand the Hope Scholarship and Lifetime Learning Credits; to the Committee on Finance.

Mr. GRAHAM of Florida. Mr. President, today, I am introducing legislation that increases the Federal commitment to help families meet the increasing costs of higher education.

In today's economy—as well as with life in general—getting a higher education is essential. A college educated male worker can expect to earn $29,000 more each year than his counterpart without such education. Over a working career, this edge results in more than $1 million. For women, the importance is even more pronounced. A college-educated woman can expect to earn twice what her counterpart with only a high school diploma will earn (Condition of Education 2000, U.S. Department of Education). Perhaps Federal Reserve Chairman Greenspan put it best when he said ''we must ensure that our whole population receives an education that will allow full and continuing participation in this dynamic period of American economic history.''

Having college-educated parents also forms the foundation for better lives for their children. Census data reveals that children of college-educated parents are twice as likely to go to college, as are those with parents who did not go to college. Research also suggest that children of college-educated parents are healthier and perform better academically than children of those with only a high school diploma.

Recognizing the importance of an advanced degree is only part of the battle. Attendance at a college or university is an expensive proposition for most American families. Worse yet, it is getting even more expensive. According to the Congressional Research Service, increases in tuition over the last twenty years on a constant dollar basis have outpaced growth in the average household's income. The difficulty of paying for college is particularly acute for lower-income families. In 1980, college costs consumed 32 percent of the average household income for a family in the lowest income quintile. By 2000, the percentage of that family's income needed to pay for college increased to 56 percent.

In the 2001–2002 school year, about $90 billion was awarded in student aid. The Federal Government provided seventy percent of this aid through appropriations, guaranteed loans, and tax credits. Although this $90 billion represents a substantial increase in the amount of aid provided by the Federal Government from just ten years ago, the Federal Government can and should do more.

A recent report by the Congressional Budget Office examined the cost of attending colleges and universities and how those costs are borne. CBO estimates that the average annual cost of attendance at public four-year colleges in the 1999–2000 academic year was nearly $11,300 after taking into consideration that portion of the costs that are covered by the institutions themselves or as a subsidy from State legislatures. Parents and students on average are responsible for nearly three-quarters of this amount, which is a significant financial hurdle, particularly for low-income families.

Under current law the maximum credit available under the HOPE Scholarship tax credit program is $1,500 assuming the student has at least $2,000 of tuition costs. The bill I am introducing increases the credit percentage to 100 percent of tuition costs and increases the maximum credit available to $2,500.

Second, the bill extends the HOPE Scholarship credit to cover four years of higher education. It recognizes that our economy increasingly demands that tomorrow's worker has a college degree, and to get such a degree requires at least four years. We shouldn't have a program designed to assist students in obtaining those degrees that abandons them mid-stream.

Third, the legislation makes the HOPE credit refundable. Refundability is the only way to provide financial assistance through the tax code to families with low incomes. And that assistance is sorely needed. According to CBO the HOPE tax credit amounts to $147 of assistance, on average, for families with income less than $30,000.

Finally, the bill creates a mechanism by which families can get the benefits of the credit sooner than it is currently available. Today, families must pay the tuition costs and then file for the credit in April of the following year when they file their income tax returns. The bill directs Treasury to create a program that would allow it to transfer the value of the credit directly to an educational institution on behalf of the taxpayer. A similar mechanism is currently available to those eligible for the tax credit for health insurance costs.

The bill I am introducing today focuses on those students who follow a more traditional path to higher education. I will be introducing separate legislation in the near future that makes changes to the Lifetime Learning credit designed to make it more useful for ''nontraditional'' students.

By Mr. KENNEDY (for himself, Mr. DASCHLE, Mr. REID, Mr. LEAHY, Mr. DODD, Mr. HARKIN, Mr. KERRY, Mr. FEINGOLD, Ms. MIKULSKI, Mr. SCHUMER, Mrs. MURRAY, Mr. DURBIN, Mr. EDWARDS, Mrs. CLINTON, Mr. SARBANES, Mr. LAUTENBERG, Mr. CORZINE, Ms. LANDRIEU, and Ms. CANTWELL):

S. 2088. A bill to restore, reaffirm, and reconcile legal rights and remedies under civil rights statutes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues, Senators DASCHLE, REID, LEAHY, DODD, HARKIN, KERRY, FEINGOLD, MIKULSKI, SCHUMER, MURRAY, DURBIN, EDWARDS, CLINTON, SARBANES, LAUTENBERG, CORZINE, LANDRIEU, and CANTWELL today in introducing the ''Fairness and Individual Rights Necessary to Ensure a Stronger Society: the Civil Rights Act of 2004''. This legislation, the ''Fairness Act,'' is vital to realizing the full promise of, the numerous Federal laws that have been enacted to guarantee civil rights and fair labor practices for all our citizens.

2004 is an especially significant year in commemorating the historic landmarks in America's struggle for civil rights. On January 15, we celebrated the 75th anniversary of the birth of Dr. Martin Luther King. On May 17, we will celebrate the 50th anniversary of the Supreme Court's historic decision in Brown v. Board of Education. And on July 2, we will celebrate the 40th Anniversary of the Civil Rights Act of 1964.

These historic milestones make this year not only a time for celebration, but also a time to reaffirm our commitment to the cause of civil rights, which is still the unfinished business of America. We must continue moving toward the goal for which so many have given so much across the years. The bipartisan civil rights laws that have been enacted over the past forty years have made our Nation stronger, better, and fairer. Civil rights is at its heart the ongoing, daily struggle to live up to what is best about America—our fundamental belief in equal opportunity and equal justice for all.

The Fairness Act is part of that continuing effort. Its goal is to guarantee that victims of discrimination and unfair labor practices have access to the courts when necessary to enforce their rights and to obtain effective remedies. As Congress has long realized, full enforcement of civil rights and fair labor practices is possible only if individuals are able to petition the courts. Our proposals will strengthen existing protections, often in cases where the courts have let us down by adopting unacceptably narrow interpretations of existing law. We recognize as well that Congress has not always made its intent clear in enacting specific and detailed provisions of these laws.

Unfortunately, recent court decisions have limited the private right to seek relief and to obtain effective remedies under many of our civil rights and labor laws. Cases like Alexander v. Sandoval and Kimel v. Florida Board of Regents have effectively closed the courthouse door on many persons seeking relief they deserve from discriminatory practices.

Key elements of our proposals will make it easier for working women to enforce their right to equal pay for equal work. We enhance protections against discrimination in federally funded services and enact needed safeguards for students who are harassed because of their national origin, gender, race, or disability. We also make

sure that victims of discrimination and unfair labor practices can receive meaningful damages where appropriate. Our legislation will allow enable members of our armed forces to enforce their federal right to be free from discrimination by States because of their military status.

In addition, our proposals will ensure that older workers who suffer age discrimination are not denied the chance to seek relief merely because they work for a state government. We also stop employers from requiring workers to sign away their right to bring discrimination claims and fair labor claims to court, in order to get a job or keep a job.

These and other important proposals included in the Fairness Act are an essential part of our commitment to make Dr. King's dream a reality for everyone in every community in our country.

To those who say that now is not the time to seek this new progress, we reply, as Dr. King himself replied, now is always the time for civil rights. We know our cause is just. As Dr. King reminded us, ''the arc of the moral universe is long, but it bends toward justice.'' I urge all of my colleagues to support 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. 2088

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 ''Fairness and Individual Rights Necessary to Ensure a Stronger Society: Civil Rights Act of 2004''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—NONDISCRIMINATION IN FEDERALLY FUNDED PROGRAMS AND ACTIVITIES

Subtitle A—Private Rights of Action and the Disparate Impact Standard of Proof

SEC. 101. FINDINGS.

Congress finds the following:

(1) This subtitle is made necessary by a decision of the Supreme Court in Alexander v. Sandoval, 532 U.S. 275 (2001) that significantly impairs statutory protections against discrimination that Congress has erected over a period of almost 4 decades. The Sandoval decision undermines these statutory protections by stripping victims of discrimination (defined under regulations that Congress required Federal departments and agencies to promulgate to implement title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)) of the right to bring action in Federal court to redress the discrimination and by casting doubt on the validity of the regulations themselves.

(2) The Sandoval decision attacks settled expectations created by title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972 (also known as the ''Patsy Takemoto Mink Equal Opportunity in Education Act'') (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (collectively referred to in this Act as the 'covered civil rights provisions'). The covered civil rights provisions were designed to establish and make effective the rights of persons to be free from discrimination on the part of entities that are subject to 1 or more of the covered civil rights provisions, as appropriate (referred to in this Act as 'covered entities'). In 1964 Congress adopted title VI of the Civil Rights Act of 1964 to ensure that Federal dollars would not be used to subsidize or support programs or activities that discriminated on racial, color, or national origin grounds. In the years that followed, Congress extended these protections by enacting laws barring discrimination in federally funded activities on the basis of sex in title IX of the Education Amendments of 1972, age in the Age Discrimination Act of 1975, and disability in section 504 of the Rehabilitation Act of 1973.

(3) From the outset, Congress and the executive branch made clear that the regulatory process would be used to ensure broad protections for beneficiaries of the law. The first regulations promulgated by the Department of Justice under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) forbade the use of ''criteria or methods of administration which have the effect of subjecting individuals to discrimination . . .'' (section 80.3 of title 45, Code of Federal Regulations) and prohibited retaliation against persons participating in litigation or administrative resolution of charges of discrimination brought under the Act. These regulations were drafted by the same executive branch officials who played a central role in drafting title VI of the Civil Rights Act of 1964. The language used is, in relevant respects, virtually indistinguishable from regulations under the several Acts in effect today. For example, section 304 of the Age Discrimination Act of 1975 (42 U.S.C. 6103) required the Secretary of the Department of Health, Education, and Welfare (HEW) (now Health and Human Services (HHS)) to promulgate ''general regulations'' to effectuate the purposes of the Act. These ''government-wide regulations,'' governing age discrimination in programs and activities receiving Federal financial assistance condemn ''any actions which have [a discriminatory] effect, on the basis of age . . .'' (section 90.12 of title 45, Code of Federal Regulations).

(4) None of the regulations under the laws addressed in this subtitle have ever been invalidated. In 1966, Congress considered and rejected a proposal to invalidate the disparate impact regulations promulgated pursuant to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). In 1975, Congress reviewed and maintained the implementing regulations promulgated pursuant to title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), pursuant to a statutory procedure designed to afford Congress the opportunity to invalidate provisions deemed to be inconsistent with congressional intent. The Supreme Court has recognized that Congress's failure to disapprove regulations implies that the regulations accurately reflect congressional intent. North Haven Bd. of Educ. v. Bell, 456 U.S. 512, 533–34 (1982). Moreover, the Supreme Court explicitly recognized congressional approval of the regulations promulgated to implement section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) in Consolidated Rail Corp. v. Darrone, 465 U.S. 624, 634 (1984), stating that ''[t]he regulations particularly merit deference in

the present case: the responsible Congressional committees participated in their formation and both these committees and Congress itself endorsed the regulations in their final form.''.

(5) All of the civil rights provisions cited in this section were designed to confer a benefit on persons who were discriminated against. They relied heavily on private attorneys general for effective enforcement. Congress acknowledged that it could not secure compliance solely through enforcement actions initiated by the Attorney General. Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968) (per curiam).

(6) The Supreme Court has made it clear that individuals suffering discrimination under these statutes have a private right of action in the Federal courts, and that this is necessary for effective protection of the law, although Congress did not make such a right of action explicit in the statute. Cannon v. University of Chicago, 441 U.S. 677 (1979).

(7)(A) Notwithstanding the decision of the Supreme Court in Cort v. Ash, 422 U.S. 66 (1975) to abandon prior precedent and require explicit statutory statements of a right of action, Congress and the Courts both before and after Cort have recognized an implied right of action under the above statutes. For example, Congress has consistently provided the means for enforcing the statutes. In 1972, Congress established a right to attorney's fees in private actions brought under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) that continued with enactment of the Civil Rights Attorneys' Fees Awards Act of 1976 (Public Law 94–559; 90 Stat. 2641). In 1973, Congress provided a right to attorney's fees for prevailing parties under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) without expressly stating that there was a right of action. In 1978 Congress amended the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) to include a right to attorney's fees. Because the Age Discrimination Act of 1975 was enacted while the Cort decision was pending, Congress also enacted in 1978 a limited private right of action to enforce the Age Discrimination Act of 1975.

(B) The Senate Report that accompanied the Civil Rights Attorneys' Fees Awards Act of 1976 (Public Law 94–559; 90 Stat. 2641) stated that ''All of these civil rights laws . . . depend heavily upon private enforcement, and fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important congressional policies which these laws contain.'' S. Rep. No. 94–1011 (1976).

(8) The Supreme Court had no basis in law or in legislative history in Sandoval for denying a right of action under regulations promulgated pursuant to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) while permitting it under the statute. The regulations were congressionally mandated and their promulgation was specifically directed by Congress under section 602 of that Act (42 U.S.C. 2000d–1) ''to effectuate'' the antidiscrimination provisions of the statute. Title VI of the Civil Rights Act of 1964 stressed the importance of the regulations by requiring them to be ''approved by the President''. Similarly, the regulations promulgated pursuant to title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) were also congressionally authorized and specifically directed by Congress to effectuate the provisions of the statute. Title IX of the Education Amendments of 1972 stressed the importance of the regulations by requiring them to be ''approved by the President''.

(9) Regulations that prohibit practices that have the effect of discrimination are consistent with prohibitions of disparate treatment that require a showing of intent, as the Supreme Court has acknowledged in the following decisions:

(A) A disparate impact standard allows a court to reach discrimination that could actually exist under the guise of compliance with the law. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

(B) Evidence of a disproportionate burden will often be the starting point in any analysis of unlawful discrimination. Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977).

(C) An invidious purpose may often be inferred from the totality of the relevant facts, including, where true, that the practice bears more heavily on one race than another. Washington v. Davis, 426 U.S. 229 (1976).

(D) The disparate impact method of proof is critical to ferreting out stereotypes underlying intentional discrimination. Watson v. Fort Worth Bank & Trust, 487 U.S. 977 (1988).

(10) The interpretation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), and other statutes barring discrimination by covered entities as prohibiting practices that have disparate impact and that are not justified as necessary to achieve the goals of the programs or activities supported by the Federal financial assistance is powerfully reinforced by the use of such a standard in enforcing title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.). When the Supreme Court wavered on the application of a disparate impact standard under title VII, Congress specifically reinstated it as law in the Civil Rights Act of 1991 (Public Law 102–166; 105 Stat. 1071).

(11) By reinstating a private right of action under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and confirming that right for other civil rights statutes, Congress is not acting in a manner that would expose covered entities to unfair findings of discrimination. The legal standard for a disparate impact claim has never been structured so that a finding of discrimination could be based on numerical imbalance alone.

(12) In contrast, a failure to reinstate or confirm a private right of action would leave vindication of the rights to equality of opportunity solely to Federal agencies, which may fail to take necessary and appropriate action because of administrative overburden or other reasons. Action by Congress to specify a private right of action is necessary to ensure that persons will have a remedy if they are denied equal access to education, housing, health, environmental protection, transportation, and many other programs and services by practices of covered entities that result in discrimination.

(13) As a result of the Supreme Court's decision in Sandoval, courts have dismissed numerous claims brought under the regulations promulgated pursuant to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) that challenged actions with an unjustified discriminatory effect. Although the Sandoval Court did not address title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), lower courts have similarly dismissed claims under such Act. Courts relying on the Sandoval decision have also dismissed claims seeking redress for unlawful retaliation against persons who opposed prohibited acts, brought actions, or participated in actions, under title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972. Because judicial interpretation of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) has tracked that of title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972, without clarification of Sandoval, plaintiffs run the risk that courts may dismiss claims brought under regulations promulgated pursuant to the Age Discrimination Act of 1975 challenging actions with an unjustified discriminatory effect and claims seeking redress for unlawful retaliation against persons who have brought or participated in actions under the Age Discrimination Act of 1975.

(14) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) has received different treatment by the Supreme Court. In Alexander v. Choate, 469 U.S. 287 (1985), the Court proceeded on the assumption that the statute itself prohibited some actions that had a disparate impact on handicapped individuals—an assumption borne out by congressional statements made during passage of the Act. In Sandoval, the Court appeared to accept this principle of Alexander. Moreover, the Supreme Court explicitly recognized congressional approval of the regulations promulgated to implement section 504 of the Rehabilitation Act of 1973 in Consolidated Rail Corp. v. Darrone, 465 U.S. 624, 634 (1984). Relying on the validity of the regulations, Congress incorporated the regulations into the statutory requirements of section 204 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12134). Thus it does not appear at this time that there is a risk that the private right of action to challenge disparate impact discrimination under section 504 of the Rehabilitation Act of 1973 will become unavailable.

(15) Since the enactment of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973, Congress has intended that the prohibitions on discrimination in those provisions include a prohibition on retaliation. The ability to prevent retaliation against persons who oppose any policy or practice prohibited by those provisions, or make a charge, testify, assist, or participate in any manner in an investigation, proceeding, or hearing under those provisions, is essential to realizing the prohibitions on discrimination in those provisions.

(16) The right to maintain a private right of action under a provision added to a statute under this subtitle will be effectuated by a waiver of sovereign immunity in the same manner as sovereign immunity is waived under the remaining provisions of that statute.

SEC. 102. PROHIBITED DISCRIMINATION.

(a) CIVIL RIGHTS ACT OF 1964.—Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended—

(1) by striking ''No'' and inserting ''(a) No''; and

(2) by adding at the end the following:

''(b)(1)(A) Discrimination (including exclusion from participation and denial of benefits) based on disparate impact is established under this title only if—

''(i) a person aggrieved by discrimination on the basis of race, color, or national origin (referred to in this title as an 'aggrieved person') demonstrates that an entity subject to this title (referred to in this title as a 'covered entity') has a policy or practice that causes a disparate impact on the basis of race, color, or national origin and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the program or activity alleged to have been operated in a discriminatory manner; or

''(ii) the aggrieved person demonstrates (consistent with the demonstration required under title VII with respect to an 'alternative employment practice') that a less discriminatory alternative policy or practice

exists, and the covered entity refuses to adopt such alternative policy or practice.

''(B)(i) With respect to demonstrating that a particular policy or practice causes a disparate impact as described in subparagraph (A)(i), the aggrieved person shall demonstrate that each particular challenged policy or practice causes a disparate impact, except that if the aggrieved person demonstrates to the court that the elements of a covered entity's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one policy or practice.

''(ii) If the covered entity demonstrates that a specific policy or practice does not cause the disparate impact, the covered entity shall not be required to demonstrate that such policy or practice is necessary to achieve the goals of its program or activity.

''(2) A demonstration that a policy or practice is necessary to achieve the goals of a program or activity may not be used as a defense against a claim of intentional discrimination under this title.

''(3) In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion.

''(c) No person in the United States shall be subjected to discrimination, including retaliation, because such person opposed any policy or practice prohibited by this title, or because such person made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.''.

(b) EDUCATION AMENDMENTS OF 1972.—Section 901 of the Education Amendments of 1972 (20 U.S.C. 1681) is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by inserting after subsection (b) the following:

''(c)(1)(A) Subject to the conditions described in paragraphs (1) through (9) of subsection (a), discrimination (including exclusion from participation and denial of benefits) based on disparate impact is established under this title only if—

''(i) a person aggrieved by discrimination on the basis of sex (referred to in this title as an 'aggrieved person') demonstrates that an entity subject to this title (referred to in this title as a 'covered entity') has a policy or practice that causes a disparate impact on the basis of sex and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the program or activity alleged to have been operated in a discriminatory manner; or

''(ii) the aggrieved person demonstrates (consistent with the demonstration required under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) with respect to an 'alternative employment practice') that a less discriminatory alternative policy or practice exists, and the covered entity refuses to adopt such alternative policy or practice.

''(B)(i) With respect to demonstrating that a particular policy or practice causes a disparate impact as described in subparagraph (A)(i), the aggrieved person shall demonstrate that each particular challenged policy or practice causes a disparate impact, except that if the aggrieved person demonstrates to the court that the elements of a covered entity's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one policy or practice.

''(ii) If the covered entity demonstrates that a specific policy or practice does not cause the disparate impact, the covered entity shall not be required to demonstrate that such policy or practice is necessary to achieve the goals of its program or activity.

''(2) A demonstration that a policy or practice is necessary to achieve the goals of a program or activity may not be used as a defense against a claim of intentional discrimination under this title.

''(3) In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion.

''(d) No person in the United States shall be subjected to discrimination, including retaliation, because such person opposed any policy or practice prohibited by this title, or because such person made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.''.

(c) AGE DISCRIMINATION ACT OF 1975.—Section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6102) is amended—

(1) by striking ''Pursuant'' and inserting ''(a) Pursuant''; and

(2) by adding at the end the following:

''(b)(1)(A) Subject to the conditions described in subsections (b) and (c) of section 304, discrimination (including exclusion from participation and denial of benefits) based on disparate impact is established under this title only if—

''(i) a person aggrieved by discrimination on the basis of age (referred to in this title as an 'aggrieved person') demonstrates that an entity subject to this title (referred to in this title as a 'covered entity') has a policy or practice that causes a disparate impact on the basis of age and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the program or activity alleged to have been operated in a discriminatory manner; or

''(ii) the aggrieved person demonstrates (consistent with the demonstration required under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) with respect to an 'alternative employment practice') that a less discriminatory alternative policy or practice exists, and the covered entity refuses to adopt such alternative policy or practice.

''(B)(i) With respect to demonstrating that a particular policy or practice causes a disparate impact as described in subparagraph (A)(i), the aggrieved person shall demonstrate that each particular challenged policy or practice causes a disparate impact, except that if the aggrieved person demonstrates to the court that the elements of a covered entity's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one policy or practice.

''(ii) If the covered entity demonstrates that a specific policy or practice does not cause the disparate impact, the covered entity shall not be required to demonstrate that such policy or practice is necessary to achieve the goals of its program or activity.

''(2) A demonstration that a policy or practice is necessary to achieve the goals of a program or activity may not be used as a defense against a claim of intentional discrimination under this title.

''(3) In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion.

''(c) No person in the United States shall be subjected to discrimination, including retaliation, because such person opposed any policy or practice prohibited by this title, or because such person made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.''.

SEC. 103. RIGHTS OF ACTION.

(a) CIVIL RIGHTS ACT OF 1964.—Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) is amended—

(1) by inserting ''(a)'' before ''Each Federal department and agency which is empowered''; and

(2) by adding at the end the following:

''(b) Any person aggrieved by the failure of a covered entity to comply with this title, including any regulation promulgated pursuant to this title, may bring a civil action in any Federal or State court of competent jurisdiction to enforce such person's rights.''.

(b) EDUCATION AMENDMENTS OF 1972.—Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682) is amended—

(1) by inserting ''(a)'' before ''Each Federal department and agency which is empowered''; and

(2) by adding at the end the following:

''(b) Any person aggrieved by the failure of a covered entity to comply with this title, including any regulation promulgated pursuant to this title, may bring a civil action in any Federal or State court of competent jurisdiction to enforce such person's rights.''.

(c) AGE DISCRIMINATION ACT OF 1975.—Section 305(e) of the Age Discrimination Act of 1975 (42 U.S.C. 6104(e)) is amended in the first sentence of paragraph (1), by striking ''this Act'' and inserting ''this title, including a regulation promulgated to carry out this title,''.

SEC. 104. RIGHT OF RECOVERY.

(a) CIVIL RIGHTS ACT OF 1964.—Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000–d et seq.) is amended by inserting after section 602 the following:

''SEC. 602A. ACTIONS BROUGHT BY AGGRIEVED PERSONS.

''(a) CLAIMS BASED ON PROOF OF INTENTIONAL DISCRIMINATION.—In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful intentional discrimination (not a practice that is unlawful because of its disparate impact) prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages), attorney's fees (including expert fees), and costs, except that punitive damages are not available against a government, government agency, or political subdivision.

''(b) CLAIMS BASED ON THE DISPARATE IMPACT STANDARD OF PROOF.—In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful discrimination based on disparate impact prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable relief, attorney's fees (including expert fees), and costs.''.

(b) EDUCATION AMENDMENTS OF 1972.—Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) is amended by inserting after section 902 the following:

''SEC. 902A. ACTIONS BROUGHT BY AGGRIEVED PERSONS.

''(a) CLAIMS BASED ON PROOF OF INTENTIONAL DISCRIMINATION.—In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful intentional discrimination (not a practice that is unlawful because of its disparate impact) prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages), attorney's fees (including expert fees), and costs, except that punitive damages are not available against a government, government agency, or political subdivision.

''(b) CLAIMS BASED ON THE DISPARATE IMPACT STANDARD OF PROOF.—In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful discrimination based on

disparate impact prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable relief, attorney's fees (including expert fees), and costs.''.

(c) AGE DISCRIMINATION ACT OF 1975.—

(1) IN GENERAL.—Section 305 of the Age Discrimination Act of 1975 (42 U.S.C. 6104) is amended by adding at the end the following:

''(g)(1) In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful intentional discrimination (not a practice that is unlawful because of its disparate impact) prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages), attorney's fees (including expert fees), and costs, except that punitive damages are not available against a government, government agency, or political subdivision.

''(2) In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful discrimination based on disparate impact prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable relief, attorney's fees (including expert fees), and costs.''.

(2) CONFORMITY OF ADA WITH TITLE VI AND TITLE IX.—

(A) ELIMINATING WAIVER OF RIGHT TO FEES IF NOT REQUESTED IN COMPLAINT.—Section 305(e)(1) of the Age Discrimination Act of 1975 (42 U.S.C. 6104(e)) is amended—

(i) by striking ''to enjoin a violation'' and inserting ''to redress a violation''; and

(ii) by striking the second sentence and inserting the following: ''The Court shall award the costs of suit, including a reasonable attorney's fee (including expert fees), to the prevailing plaintiff.''.

(B) ELIMINATING UNNECESSARY MANDATES: TO EXHAUST ADMINISTRATIVE REMEDIES; AND TO DELAY SUIT LONGER THAN 180 DAYS TO OBTAIN AGENCY REVIEW.—Section 305(f) of the Age Discrimination Act of 1975 (42 U.S.C. 6104(f)) is amended by striking ''With respect to actions brought for relief based on an alleged violation of the provisions of this title,'' and inserting ''Actions brought for relief based on an alleged violation of the provisions of this title may be initiated in a court of competent jurisdiction, pursuant to section 305(e), or before the relevant Federal department or agency. With respect to such actions brought initially before the relevant Federal department or agency,''.

(C) ELIMINATING DUPLICATIVE ''REASONABLENESS'' REQUIREMENT; CLARIFYING THAT ''REASONABLE FACTORS OTHER THAN AGE'' IS DEFENSE TO A DISPARATE IMPACT CLAIM, NOT AN EXCEPTION TO ADA COVERAGE.—Section 304(b)(1) of the Age Discrimination Act of 1975 (42 U.S.C. 6103(b)(1)) is amended by striking ''involved—'' and all that follows through the period and inserting ''involved such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity.''.

(d) REHABILITATION ACT OF 1973.—Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) is amended by adding at the end the following:

''(e)(1) In an action brought by a person aggrieved by discrimination on the basis of disability (referred to in this section as an 'aggrieved person') under this section against an entity subject to this section (referred to in this section as a 'covered entity') who has engaged in unlawful intentional discrimination (not a practice that is unlawful because of its disparate impact) prohibited under this section (including its implementing regulations), the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages), attorney's fees (including expert fees), and costs, except that punitive damages are not available against a government, government agency, or political subdivision.

''(2) In an action brought by an aggrieved person under this section against a covered entity who has engaged in unlawful discrimination based on disparate impact prohibited under this section (including its implementing regulations), the aggrieved person may recover equitable relief, attorney's fees (including expert fees), and costs.''.

SEC. 105. CONSTRUCTION.

(a) RELIEF.—Nothing in this subtitle, including any amendment made by this subtitle, shall be construed to limit the scope of, or the relief available under, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), or any other provision of law.

(b) DEFENDANTS.—Nothing in this subtitle, including any amendment made by this subtitle, shall be construed to limit the scope of the class of persons who may be subjected to civil actions under the covered civil rights provisions.

SEC. 106. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle, and the amendments made by this subtitle, are retroactive to April 24, 2001, and effective as of that date.

(b) APPLICATION.—This subtitle, and the amendments made by this subtitle, apply to all actions or proceedings pending on or after April 24, 2001, except as to an action against a State on a claim brought under the disparate impact standard, as to which the effective date is the date of enactment of this Act.

Subtitle B—Harassment

SEC. 111. FINDINGS.

Congress finds the following:

(1) As the Supreme Court has held, covered entities are liable for harassment on the basis of sex under their education programs and activities under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) (referred to in this subtitle as ''title IX''). Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 75 (1992) (damages remedy available for harassment of student by a teacher coach); Davis v. Monroe County Board of Education, 526 U.S. 629, 633 (1999) (authorizing damages action against school board for student-on-student sexual harassment).

(2) Courts have confirmed that covered entities are liable for harassment on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (referred to in this subtitle as ''title VI''), e.g., Bryant v. Independent School District No. I–38, 334 F.3d 928 (10th Cir. 2003) (liability for student-on-student racial harassment). Moreover, judicial interpretation of the similarly worded Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) has tracked that of title VI and title IX.

(3) As these courts have properly recognized, harassment on a prohibited basis under a program or activity, whether perpetrated by employees or agents of the program or activity, by peers of the victim, or by others who conduct harassment under the program or activity, is a form of unlawful and intentional discrimination that inflicts substantial harm on beneficiaries of the program or activity and violates the obligation of a covered entity to maintain a nondiscriminatory environment.

(4) In a 5 to 4 ruling, the Supreme Court held that students subjected to sexual harassment may receive a damages remedy under title IX only when school officials have ''actual notice'' of the harassment and are ''deliberately indifferent'' to it. Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998). See also Davis v. Monroe County Board of Education, 526 U.S. 629 (1999).

(5) The standard delineated in Gebser and followed in Davis has been applied by lower courts regarding the liability of covered entities for damages for harassment based on race, color, or national origin under title VI. E.g., Bryant v. Independent School District No. I–38, 334 F.3d 928 (10th Cir. 2003). Because of the similarities in the wording and interpretation of the underlying statutes, this standard may be applied to claims for damages brought under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as well.

(6) Although they do not affect the relevant standards for individuals to obtain injunctive and equitable relief for harassment on the basis of race, color, sex, national origin, age, or disability under covered programs and activities, Gebser and its progeny severely limit the availability of remedies for such individuals by imposing new, more stringent standards for recovery of damages under title VI and title IX, and potentially under the Age Discrimination Act of 1975 and section 504 of the Rehabilitation Act of 1973. Yet in many cases, damages are the only remedy that would effectively rectify past harassment.

(7) As recognized by the dissenters in Gebser, these limitations on effective relief thwart Congress's underlying purpose to protect students from harassment. By making the ''policy choice'' to ''rank[] protection of the school district's purse above the protection of immature high school students'', the Gebser case ''is not faithful to the intent of the policymaking branch of our Government''. Gebser, 524 U.S. at 306 (Stevens, J., dissenting).

(8) The rulings in Gebser and its progeny create an incentive for covered entities to insulate themselves from knowledge of harassment on the basis of race, color, sex, national origin, age, or disability rather than adopting and enforcing practices that will minimize the danger of such harassment. The rulings thus undermine the purpose of prohibitions on discrimination in the civil rights laws: ''to induce [covered programs or activities] to adopt and enforce practices that will minimize the danger that vulnerable students [or other beneficiaries] will be exposed to such odious behavior''. Gebser, 524 U.S. at 300 (Stevens, J., dissenting).

(9) The Gebser ruling contravened the interpretations of title VI and title IX by the Department of Education, which interpretations recognized liability for damages for harassment based on race, color, sex, or national origin based on agency principles. Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12034 (March 13, 1997); Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance, 59 Fed. Reg. 11448 (March 10, 1994).

(10) Legislative action is necessary and appropriate to reverse Gebser and its progeny and restore the availability of a full range of remedies for harassment based on race, color, sex, national origin, age, or disability. The Gebser majority itself invited Congress to ''speak directly on the subject'' of damages liability to provide additional guidance to the courts. 524 U.S. at 292.

(11) Restoring the availability of a full range of remedies for harassment will—

(A) ensure that students and other beneficiaries of federally funded programs and activities have protection from harassment on the basis of race, color, sex, national origin, age, or disability that is comparable in strength and effectiveness to that available to employees under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), and title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.);

(B) encourage covered entities to adopt and enforce meaningful policies and procedures to prevent and remedy harassment;

(C) deter incidents of harassment; and

(D) provide appropriate remedies for discrimination.

(12) Congress has the same affirmative powers to enact legislation restoring the availability of a full range of remedies for harassment as it did to enact the underlying statutory prohibitions on harassment, including powers under section 5 of the 14th amendment and section 8 of article I of the Constitution.

(13) The right to maintain a private right of action under a provision added to a statute under this subtitle will be effectuated by a waiver of sovereign immunity in the same manner as sovereign immunity is waived under the remaining provisions of that statute.

SEC. 112. RIGHT OF RECOVERY.

(a) CIVIL RIGHTS ACT OF 1964.—Section 602A of the Civil Rights Act of 1964, as added by section 104, is amended by adding at the end the following:

''(c) CLAIMS BASED ON HARASSMENT.—

''(1) RIGHT OF RECOVERY.—In an action brought against a covered entity by (including on behalf of) an aggrieved person who has been subjected to unlawful harassment under a program or activity, the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages subject to the provisions of paragraph (2)), attorney's fees (including expert fees), and costs.

''(2) AVAILABILITY OF DAMAGES.—

''(A) TANGIBLE ACTION BY AGENT OR EMPLOYEE.—If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in a tangible action to the aggrieved person, damages shall be available against the covered entity.

''(B) NO TANGIBLE ACTION BY AGENT OR EMPLOYEE.—If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in no tangible action to the aggrieved person, no damages shall be available against the covered entity if it can demonstrate that—

''(i) it exercised reasonable care to prevent and correct promptly any harassment based on race, color, or national origin; and

''(ii) the aggrieved person unreasonably failed to take advantage of preventive or corrective opportunities offered by the covered entity that—

''(I) would likely have provided redress and avoided the harm described by the aggrieved person; and

''(II) would not have exposed the aggrieved person to undue risk, effort, or expense.

''(C) HARASSMENT BY THIRD PARTY.—If a person who is not an agent or employee of a covered entity subjects an aggrieved person to unlawful harassment under a program or activity, and the covered entity involved knew or should have known of the harassment, no damages shall be available against the covered entity if it can demonstrate that it exercised reasonable care to prevent and correct promptly any harassment based on race, color, or national origin.

''(D) DEMONSTRATION.—For purposes of subparagraphs (B) and (C), a showing that the covered entity has exercised reasonable care to prevent and correct promptly any harassment based on race, color, or national origin includes a demonstration by the covered entity that it has—

''(i) established, adequately publicized, and enforced an effective, comprehensive, harassment prevention policy and complaint procedure that is likely to provide redress and avoid harm without exposing the person subjected to the harassment to undue risk, effort, or expense;

''(ii) undertaken prompt, thorough, and impartial investigations pursuant to its complaint procedure; and

''(iii) taken immediate and appropriate corrective action designed to stop harassment that has occurred, correct its effects on the aggrieved person and ensure that the harassment does not recur.

''(E) PUNITIVE DAMAGES.—Punitive damages shall not be available under this subsection against a government, government agency, or political subdivision.

''(3) DEFINITIONS.—As used in this subsection:

''(A) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.

''(B) TANGIBLE ACTION.—The term 'tangible action' means—

''(i) a significant adverse change in an individual's status caused by an agent or employee of a covered entity with regard to the individual's participation in, access to, or enjoyment of, the benefits of a program or activity; or

''(ii) an explicit or implicit condition by an agent or employee of a covered entity on an individual's participation in, access to, or enjoyment of, the benefits of a program or activity based on the individual's submission to the harassment.

''(C) UNLAWFUL HARASSMENT.—The term 'unlawful harassment' means harassment that is unlawful under this title.''.

(b) EDUCATION AMENDMENTS OF 1972.—Section 902A of the Civil Rights Act of 1964, as added by section 104, is amended by adding at the end the following:

''(c) CLAIMS BASED ON HARASSMENT.—

''(1) RIGHT OF RECOVERY.—In an action brought against a covered entity by (including on behalf of) aggrieved person who has been subjected to unlawful harassment under a program or activity, the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages subject to the provisions of paragraph (2)), attorney's fees (including expert fees), and costs.

''(2) AVAILABILITY OF DAMAGES.—

''(A) TANGIBLE ACTION BY AGENT OR EMPLOYEE.—If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in a tangible action to the aggrieved person, damages shall be available against the covered entity.

''(B) NO TANGIBLE ACTION BY AGENT OR EMPLOYEE.—If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in no tangible action to the aggrieved person, no damages shall be available against the covered entity if it can demonstrate that—

''(i) it exercised reasonable care to prevent and correct promptly any harassment based on sex; and

''(ii) the aggrieved person unreasonably failed to take advantage of preventive or corrective opportunities offered by the covered entity that—

''(I) would likely have provided redress and avoided the harm described by the aggrieved person; and

''(II) would not have exposed the aggrieved person to undue risk, effort, or expense.

''(C) HARASSMENT BY THIRD PARTY.—If a person who is not an agent or employee of a covered entity subjects an aggrieved person to unlawful harassment under a program or activity, and the covered entity knew or should have known of the harassment, no damages shall be available against the covered entity if it can demonstrate that it exercised reasonable care to prevent and correct promptly any harassment based on sex.

''(D) DEMONSTRATION.—For purposes of subparagraphs (B) and (C), a showing that the covered entity has exercised reasonable care to prevent and correct promptly any harassment based on sex includes a demonstration by the covered entity that it has—

''(i) established, adequately publicized, and enforced an effective, comprehensive, harassment prevention policy and complaint procedure that is likely to provide redress and avoid harm without exposing the person subjected to the harassment to undue risk, effort, or expense;

''(ii) undertaken prompt, thorough, and impartial investigations pursuant to its complaint procedure; and

''(iii) taken immediate and appropriate corrective action designed to stop harassment that has occurred, correct its effects on the aggrieved person, and ensure that the harassment does not recur.

''(E) PUNITIVE DAMAGES.—Punitive damages shall not be available under this subsection against a government, government agency, or political subdivision.

''(3) DEFINITIONS.—As used in this subsection:

''(A) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.

''(B) TANGIBLE ACTION.—The term 'tangible action' means—

''(i) a significant adverse change in an individual's status caused by an agent or employee of a covered entity with regard to the individual's participation in, access to, or enjoyment of, the benefits of a program or activity; or

''(ii) an explicit or implicit condition by an agent or employee of a covered entity on an individual's participation in, access to, or enjoyment of, the benefits of a program or activity based on the individual's submission to the harassment.

''(C) UNLAWFUL HARASSMENT.—The term 'unlawful harassment' means harassment that is unlawful under this title.''.

(c) AGE DISCRIMINATION ACT OF 1975.—Section 305(g) of the Age Discrimination Act of 1975, as added by section 104, is amended by adding at the end the following:

''(3)(A) If an action brought against a covered entity by (including on behalf of) an aggrieved person who has been subjected to unlawful harassment under a program or activity, the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages subject to the provisions of subparagraph (B)), attorney's fees (including expert fees), and costs.

''(B)(i) If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in a tangible action to the aggrieved person, damages shall be available against the covered entity.

''(ii) If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in no tangible action to the aggrieved person, no damages shall be available against the covered entity if it can demonstrate that—

''(I) it exercised reasonable care to prevent and correct promptly any harassment based on age; and

''(II) the aggrieved person unreasonably failed to take advantage of preventive or corrective opportunities offered by the covered entity that—

''(aa) would likely have provided redress and avoided the harm described by the aggrieved person; and

''(bb) would not have exposed the aggrieved person to undue risk, effort, or expense.

''(iii) If a person who is not an agent or employee of a covered entity subjects an aggrieved person to unlawful harassment under a program or activity, and the covered entity knew or should have known of the harassment, no damages shall be available against the covered entity if it can demonstrate that it exercised reasonable care to prevent and correct promptly any harassment based on age.

''(iv) For purposes of clauses (ii) and (iii), a showing that the covered entity has exercised reasonable care to prevent and correct promptly any harassment based on age includes a demonstration by the covered entity that it has—

''(I) established, adequately publicized, and enforced an effective, comprehensive, harassment prevention policy and complaint procedure that is likely to provide redress and avoid harm without exposing the person subjected to the harassment to undue risk, effort, or expense;

''(II) undertaken prompt, thorough, and impartial investigations pursuant to its complaint procedure; and

''(III) taken immediate and appropriate corrective action designed to stop harassment that has occurred, correct its effects on the aggrieved person, and ensure that the harassment does not recur.

''(v) Punitive damages shall not be available under this paragraph against a government, government agency, or political subdivision.

''(C) As used in this paragraph:

''(i) The term 'demonstrates' means meets the burdens of production and persuasion.

''(ii) The term 'tangible action' means—

''(I) a significant adverse change in an individual's status caused by an agent or employee of a covered entity with regard to the individual's participation in, access to, or enjoyment of, the benefits of a program or activity; or

''(II) an explicit or implicit condition by an agent or employee of a covered entity on an individual's participation in, access to, or enjoyment of, the benefits of a program or activity based on the individual's submission to the harassment.

''(iii) The term 'unlawful harassment' means harassment that is unlawful under this title.''.

(d) REHABILITATION ACT OF 1973.—Section 504(e) of the Rehabilitation Act of 1973, as added by section 104, is amended by adding at the end the following:

''(3)(A) In an action brought against a covered entity by (including on behalf of) an aggrieved person who has been subjected to unlawful harassment under a program or activity, the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages subject to the provisions of subparagraph (B)), attorney's fees (including expert fees), and costs.

''(B)(i) If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in a tangible action to the aggrieved person, damages shall be available against the covered entity.

''(ii) If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in no tangible action to the aggrieved person, no damages shall be available against the covered entity if it can demonstrate that—

''(I) it exercised reasonable care to prevent and correct promptly any harassment based on disability; and

''(II) the aggrieved person unreasonably failed to take advantage of preventive or corrective opportunities offered by the covered entity that—

''(aa) would likely have provided redress and avoided the harm described by the aggrieved person; and

''(bb) would not have exposed the aggrieved person to undue risk, effort, or expense.

''(iii) If a person who is not an agent or employee of a covered entity subjects an aggrieved person to unlawful harassment under a program or activity, and the covered entity knew or should have known of the harassment, no damages shall be available against the covered entity if it can demonstrate that it exercised reasonable care to prevent and correct promptly any harassment based on disability.

''(iv) For purposes of clauses (ii) and (iii), a showing that the covered entity has exercised reasonable care to prevent and correct promptly any harassment based on disability includes a demonstration by the covered entity that it has—

''(I) established, adequately publicized, and enforced an effective, comprehensive, harassment prevention policy and complaint procedure that is likely to provide redress and avoid harm without exposing the person subjected to the harassment to undue risk, effort, or expense;

''(II) undertaken prompt, thorough, and impartial investigations pursuant to its complaint procedure; and

''(III) taken immediate and appropriate corrective action designed to stop harassment that has occurred, correct its effects on the aggrieved person, and ensure that the harassment does not recur.

''(v) Punitive damages shall not be available under this paragraph against a government, government agency, or political subdivision.

''(C) As used in this paragraph:

''(i) The term 'demonstrates' means meets the burdens of production and persuasion.

''(ii) The term 'tangible action' means—

''(I) a significant adverse change in an individual's status caused by an agent or employee of a covered entity with regard to the individual's participation in, access to, or enjoyment of, the benefits of a program or activity; or

''(II) an explicit or implicit condition by an agent or employee of a covered entity on an individual's participation in, access to, or enjoyment of, the benefits of a program or activity based on the individual's submission to the harassment.

''(iii) The term 'unlawful harassment' means harassment that is unlawful under this section.''.

SEC. 113. CONSTRUCTION.

Nothing in this subtitle, including any amendment made by this subtitle, shall be construed to limit the scope of the class of persons who may be subjected to civil actions under the covered civil rights provisions.

SEC. 114. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle, and the amendments made by this subtitle, are retroactive to June 22, 1998, and effective as of that date.

(b) APPLICATION.—This subtitle, and the amendments made by this subtitle, apply to all actions or proceedings pending on or after June 22, 1998, except as to an action against a State, as to which the effective date is the date of enactment of this Act.

TITLE II—UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 AMENDMENT

SEC. 201. AMENDMENT TO THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994.

(a) FINDINGS.—Congress makes the following findings:

(1) The Federal Government has an important interest in attracting and training a military to provide for the National defense. The Constitution grants Congress the power to raise and support an army for purposes of the common defense. The Nation's military readiness requires that all members of the Armed Forces, including those employed in State programs and activities, be able to serve without jeopardizing their civilian employment opportunities.

(2) The Uniformed Services Employment and Reemployment Rights Act of 1994, commonly referred to as ''USERRA'' and codified as chapter 43 of title 38, United States Code, is intended to safeguard the reemployment rights of members of the uniformed services (as that term is defined in section 4303(16) of title 38, United States Code) and to prevent discrimination against any person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service. Effective enforcement of the Act depends on the ability of private individuals to enforce its provisions in court.

(3) In Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), the Supreme Court held that congressional legislation enacted pursuant to the commerce clause of Article I, section 8, of the Constitution cannot abrogate the immunity of States under the 11th amendment to the Constitution. Some courts have interpreted Seminole Tribe of Florida v. Florida as a basis for denying relief to persons affected by a State violation of USERRA. In addition, in Alden v. Maine 527 U.S. 706, 712 (1999), the Supreme Court held that this immunity also prohibits the Federal Government from subjecting ''nonconsenting states to private suits for damages in state courts.'' As a result, although USERRA specifically provides that a person may commence an action for relief against a State for its violation of that Act, persons harmed by State violations of that Act lack important remedies to vindicate the rights and benefits that are available to all other persons covered by that Act. Unless a State chooses to waive sovereign immunity, or the Attorney General brings an action on their behalf, persons affected by State violations of USERRA may have no adequate Federal remedy for such violations.

(4) A failure to provide a private right of action by persons affected by State violations of USERRA would leave vindication of their rights and benefits under that Act solely to Federal agencies, which may fail to take necessary and appropriate action because of administrative overburden or other reasons. Action by Congress to specify such a private right of action ensures that persons affected by State violations of USERRA have a remedy if they are denied their rights and benefits under that Act.

(b) CLARIFICATION OF RIGHT OF ACTION UNDER USERRA.—Section 4323 of title 38, United States Code, is amended—

(1) in subsection (b), by striking paragraph (2) and inserting the following new paragraph (2):

''(2) In the case of an action against a State (as an employer) by a person, the action may be brought in a district court of the United States or State court of competent jurisdiction.'';

(2) by redesignating subsection (j) as subsection (k); and

(3) by inserting after subsection (i) the following new subsection (j):

''(j)(1)(A) A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee of that program or activity under this chapter for the rights or benefits authorized the employee by this chapter.

''(B) In this paragraph, the term 'program or activity' has the meaning given the term in section 309 of the Age Discrimination Act of 1975 (42 U.S.C. 6107).

''(2) An official of a State may be sued in the official capacity of the official by any person covered by paragraph (1) who seeks injunctive relief against a State (as an employer) under subsection (e). In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).''.

TITLE III—AIR CARRIER ACCESS ACT OF 1986 AMENDMENT

SEC. 301. FINDINGS.

Congress finds the following:

(1) In Love v. Delta Air Lines, 310 F. 3d 1347 (11th Cir. 2002), the United States Court of Appeals for the Eleventh Circuit held that when Congress passed the Air Carrier Access Act of 1986, adding a provision now codified at section 41705 of title 49, United States Code (referred to in this title as the ''ACAA''), Congress did not intend to create a private right of action with which individuals with disabilities could sue air carriers in Federal court for discrimination on the basis of disability. The court recognized that other courts of appeals have held that the ACAA created a private right of action. Nevertheless, the court, relying on the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001), concluded that the ACAA did not create a private right of action.

(2) The absence of a private right of action leaves enforcement of the ACAA solely in the hands of the Department of Transportation, which is overburdened and lacks the resources to investigate, prosecute violators for, and remediate all of the violations of the rights of travelers who are individuals with disabilities. Nor can the Department of Transportation bring an action that will redress the injury of an individual resulting from such a violation. The Department of Transportation can take action that fines an air carrier or requires the air carrier to obey the law in the future, but the Department is not authorized to issue orders that redress the injuries sustained by individual air passengers. Action by Congress is necessary to ensure that individuals with disabilities will have adequate remedies available when air carriers violate the ACAA (including its regulations), and only courts may provide this redress to individuals.

(3) When an air carrier violates the ACAA and discriminates against an individual with a disability, frequently the only way to compensate that individual for the harm the individual has suffered is through an award of money damages. For example, violations of the ACAA may result in travelers who are individuals with disabilities missing flights for business appointments or important personal events, or in such travelers suffering humiliating treatment at the hands of air carriers. Those harms cannot be remedied solely through injunctive relief.

(4) Unlike other civil rights statutes, the ACAA does not contain a fee-shifting provision under which a prevailing plaintiff can be awarded attorney's fees. Action by Congress is necessary to correct this anomaly. The availability of attorney's fees is essential to ensuring that persons who have been aggrieved by violations of the ACAA can enforce their rights. The inclusion of a fee-shifting provision in the ACAA will permit individuals to serve as private attorneys general, a necessary role on which enforcement of civil rights statutes depends.

SEC. 302. CIVIL ACTION.

Section 41705 of title 49, United States Code, is amended by adding at the end the following:

''(d) CIVIL ACTION.—(1) Any person aggrieved by an air carrier's violation of subsection (a) (including any regulation implementing such subsection) may bring a civil action in the district court of the United States in the district in which the aggrieved person resides, in the district containing the air carrier's principal place of business, or in the district in which the violation took place. Any such action must be commenced within 2 years after the date of the violation.

''(2) In any civil action brought by an aggrieved person pursuant to paragraph (1), the plaintiff may obtain both equitable and legal relief, including compensatory and punitive damages. The court in such action shall, in addition to such relief awarded to a prevailing plaintiff, award reasonable attorney's fees, reasonable expert fees, and costs of the action to the plaintiff.''.

TITLE IV—AGE DISCRIMINATION IN EMPLOYMENT ACT AMENDMENTS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Older Workers' Rights Restoration Act of 2004''.

SEC. 402. FINDINGS.

Congress finds the following:

(1) Since 1974, the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) (referred to in this section as the 'ADEA') has prohibited States from discriminating in employment on the basis of age. In EEOC v. Wyoming, 460 U.S. 226 (1983), the Supreme Court upheld Congress's constitutional authority to prohibit States from discriminating in employment on the basis of age. The prohibitions of the ADEA remain in effect and continue to apply to the States, as the prohibitions have for more than 25 years.

(2) Age discrimination in employment remains a serious problem both nationally and among State agencies, and has invidious effects on its victims, the labor force, and the economy as a whole. For example, age discrimination in employment—

(A) increases the risk of unemployment among older workers, who will as a result be more likely to be dependent on government resources;

(B) prevents the best use of available labor resources;

(C) adversely effects the morale and productivity of older workers; and

(D) perpetuates unwarranted stereotypes about the abilities of older workers.

(3) Private civil suits by the victims of employment discrimination have been a crucial tool for enforcement of the ADEA since the enactment of that Act. In Kimel v. Florida Board of Regents, 528 U.S. 62 (2000), however, the Supreme Court held that Congress had not abrogated State sovereign immunity to suits by individuals under the ADEA. The Federal Government has an important interest in ensuring that Federal financial assistance is not used to subsidize or facilitate violations of the ADEA. Private civil suits are a critical tool for advancing that interest.

(4) As a result of the Kimel decision, although age-based discrimination by State employers remains unlawful, the victims of such discrimination lack important remedies for vindication of their rights that are available to all other employees covered under that Act, including employees in the private sector, local government, and the Federal Government. Unless a State chooses to waive sovereign immunity, or the Equal Employment Opportunity Commission brings an action on their behalf, State employees victimized by violations of the ADEA have no adequate Federal remedy for violations of that Act. In the absence of the deterrent effect that such remedies provide, there is a greater likelihood that entities carrying out programs and activities receiving Federal financial assistance will use that assistance to violate that Act, or that the assistance will otherwise subsidize or facilitate violations of that Act.

(5) Federal law has long treated nondiscrimination obligations as a core component of programs or activities that, in whole or part, receive Federal financial assistance. That assistance should not be used, directly or indirectly, to subsidize invidious discrimination. Assuring nondiscrimination in employment is a crucial aspect of assuring nondiscrimination in those programs and activities.

(6) Discrimination on the basis of age in programs or activities receiving Federal financial assistance is, in contexts other than employment, forbidden by the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.). Congress determined that it was not necessary for the Age Discrimination Act of 1975 to apply to employment discrimination because the ADEA already forbade discrimination in employment by, and authorized suits against, State agencies and other entities that receive Federal financial assistance. In section 1003 of the Rehabilitation Act Amendments of 1986 (42 U.S.C. 2000d–7), Congress required all State entities subject to the Age Discrimination Act of 1975 to waive any immunity from suit for discrimination claims arising under the Age Discrimination Act of 1975. The earlier limitation in the Age Discrimination Act of 1975, originally intended only to avoid duplicative coverage and remedies, has in the wake of the Kimel decision become a serious loophole leaving millions of State employees without an important Federal remedy for age discrimination, resulting in the use of Federal financial assistance to subsidize or facilitate violations of the ADEA.

(7) The Supreme Court has upheld Congress's authority to condition receipt of Federal financial assistance on acceptance by the States or other covered entities of conditions regarding or related to the use of that assistance, as in Cannon v. University of Chicago, 441 U.S. 677 (1979). The Court has further recognized that Congress may require a State, as a condition of receipt of Federal financial assistance, to waive the State's sovereign immunity to suits for a violation of Federal law, as in College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666 (1999). In the wake of the Kimel decision, in order to assure compliance with, and to provide effective remedies for violations of, the ADEA in State programs or activities receiving or using Federal financial assistance, and in order to ensure that Federal financial assistance does not subsidize or facilitate violations of the ADEA, it is necessary to require such a waiver as a condition of receipt or use of that assistance.

(8) A State's receipt or use of Federal financial assistance in any program or activity of a State will constitute a limited waiver of sovereign immunity under section 7(g) of the ADEA (as added by section 404). The waiver will not eliminate a State's immunity with respect to programs or activities that do not receive or use Federal financial assistance. The State will waive sovereign immunity only with respect to suits under the ADEA brought by employees within the programs or activities that receive or use

that assistance. With regard to those programs and activities that are covered by the waiver, the State employees will be accorded only the same remedies that are accorded to other covered employees under the ADEA.

(9) The Supreme Court has repeatedly held that State sovereign immunity does not bar suits for prospective injunctive relief brought against State officials, as in Ex parte Young (209 U.S. 123 (1908)). Clarification of the language of the ADEA will confirm that that Act authorizes such suits. The injunctive relief available in such suits will continue to be no broader than the injunctive relief that was available under that Act before the Kimel decision, and that is available to all other employees under that Act.

(10) In Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971), the Supreme Court recognized that title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) ''proscribes not only overt discrimination [in employment] but also [employment] practices that are fair in form, but discriminatory in operation. . . .'' In doing so, the Court relied on section 703(a)(2) of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2(a)(2)), which contains language identical to section 4(a)(2) of the ADEA, except that the latter substitutes the word age for the grounds of prohibited discrimination specified by title VII of the Civil Rights Act of 1964: ''race, color, religion, sex, or national origin.'' The Court has confirmed that this and other related statutory language, identical to both title VII of the Civil Rights Act of 1964 and the ADEA, supports application of the disparate impact doctrine. Connecticut v. Teal, 457 U.S. 440 (1982); General Electric Co. v. Gilbert, 429 U.S. 125 (1976).

(11) Other indicia of Congress's intent to permit the disparate impact method of proving violations of the ADEA are legion, and include numerous other textual parallels between the ADEA and title VII of the Civil Rights Act of 1964, such as in the two laws' substantive prohibitions. Lorillard v. Pons, 434 U.S. 575, 584 (1978) (the ADEA's substantive prohibitions ''were derived in haec verba from Title VII''). Moreover, the ADEA and title VII of the Civil Rights Act of 1964 share ''a common purpose: 'the elimination of discrimination in the workplace,' ''. McKennon v. Nashville Banner Pub. Co., 513 U.S. 352, 358 (1995) (quoting Oscar Mayer & Co. v. Evans, 441 U.S. 750, 756 (1979)). Interpreting title VII of the Civil Rights Act of 1964 in a consistent manner is particularly appropriate when ''the two provisions share a common raison d'etre.''. Northcross v. Board of Educ. of Memphis City Schools, 412 U.S. 427, 428 (1973).

(12) The ADEA's legislative history confirms Congress's intent to redress all ''arbitrary'' age discrimination in the workplace, including arbitrary facially neutral policies and practices falling more harshly on older workers. Such policies continue to be based on the kind of ''subconscious stereotypes and prejudices'' which cannot be ''adequately policed through disparate treatment analysis,'' and thus, require application of the disparate impact theory of proof. Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 990 (1988). As the Supreme Court has noted, these prejudices are ''the essence of age discrimination.''. Hazen Paper Co. v. Biggins, 507 U.S. 604, 610, n.15 (1993).

(13) In 1991, Congress reaffirmed that title VII of the Civil Rights Act of 1964 permits victims of employment bias to state a cause of action for disparate impact discrimination when it added a provision to title VII of the Civil Rights Act of 1964 to clarify the burden of proof in disparate impact cases in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2(k)).

(14) Subsequently, several lower courts and Federal Courts of Appeal have mistakenly relied on language in the Supreme Court's opinion in Hazen Paper Co. v. Biggins, 507 U.S. 604 (1993), to suggest that the disparate impact method of proof does not apply to claims under the ADEA. Mullin v. Raytheon Co., 164 F.3d 696, 700–01 (1st Cir. 1999); EEOC v. Francis W. Parker School, 41 F.3d 1073, 1076–77 (7th Cir. 1994); Ellis v. United Airlines, Inc., 73 F.3d 999, 1006–07 (10th Cir. 1996); DiBiase v. Smithkline Beecham Corp., 48 F.3d 719, 732 (3d Cir. 1995); Lyon v. Ohio Educ. Ass'n and Prof'l Staff Union, 53 F.3d 135, 139 n.5 (6th Cir. 1995). Congress did not intend the ADEA to be interpreted to provide older workers less protections against discrimination than those protected under title VII of the Civil Rights Act of 1964. As a result, it is necessary to clarify the burden of proof in a disparate impact case under the ADEA, and thereby reaffirm that victims of age discrimination in employment discrimination may state a cause of action based on the disparate impact method of proving discrimination in appropriate circumstances.

SEC. 403. PURPOSES.

The purposes of this title are—

(1) to provide to State employees in programs or activities that receive or use Federal financial assistance the same rights and remedies for practices violating the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) as are available to other employees under that Act, and that were available to State employees prior to the Supreme Court's decision in Kimel v. Florida Board of Regents, 528 U.S. 62 (2000);

(2) to provide that the receipt or use of Federal financial assistance for a program or activity constitutes a State waiver of sovereign immunity from suits by employees within that program or activity for violations of the Age Discrimination in Employment Act of 1967;

(3) to affirm that suits for injunctive relief are available against State officials in their official capacities for violations of the Age Discrimination in Employment Act of 1967; and

(4) to reaffirm the applicability of the disparate impact standard of proof to claims under the Age Discrimination in Employment Act of 1967.

SEC. 404. REMEDIES FOR STATE EMPLOYEES.

Section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following:

''(g)(1)(A) A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee of that program or activity under this Act for equitable, legal, or other relief authorized under this Act.

''(B) In this paragraph, the term 'program or activity' has the meaning given the term in section 309 of the Age Discrimination Act of 1975 (42 U.S.C. 6107).

''(2) An official of a State may be sued in the official capacity of the official by any employee who has complied with the procedures of subsections (d) and (e), for injunctive relief that is authorized under this Act. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).''.

SEC. 405. DISPARATE IMPACT CLAIMS.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by adding at the end the following:

''(n)(1) Discrimination based on disparate impact is established under this title only if—

''(A) an aggrieved party demonstrates that an employer, employment agency, or labor organization has a policy or practice that causes a disparate impact on the basis of age and the employer, employment agency, or labor organization fails to demonstrate that the challenged policy or practice is based on reasonable factors that are job-related and consistent with business necessity other than age; or

''(B) the aggrieved party demonstrates (consistent with the demonstration standard under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) with respect to an 'alternative employment practice') that a less discriminatory alternative policy or practice exists, and the employer, employment agency, or labor organization refuses to adopt such alternative policy or practice.

''(2)(A) With respect to demonstrating that a particular policy or practice causes a disparate impact as described in paragraph (1)(A), the aggrieved party shall demonstrate that each particular challenged policy or practice causes a disparate impact, except that if the aggrieved party demonstrates to the court that the elements of an employer, employment agency, or labor organization's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one policy or practice.

''(B) If the employer, employment agency, or labor organization demonstrates that a specific policy or practice does not cause the disparate impact, the employer, employment agency, or labor organization shall not be required to demonstrate that such policy or practice is necessary to the operation of its business.

''(3) A demonstration that a policy or practice is necessary to the operation of the employer, employment agency, or labor organization's business may not be used as a defense against a claim of intentional discrimination under this title.

''(4) In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion.''.

SEC. 406. EFFECTIVE DATE.

(a) WAIVER OF SOVEREIGN IMMUNITY.—With respect to a particular program or activity, section 7(g)(1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(g)(1)) applies to conduct occurring on or after the day, after the date of enactment of this title, on which a State first receives or uses Federal financial assistance for that program or activity.

(b) SUITS AGAINST OFFICIALS.—Section 7(g)(2) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(g)(2)) applies to any suit pending on or after the date of enactment of this title.

TITLE V—CIVIL RIGHTS REMEDIES AND RELIEF

Subtitle A—Prevailing Party

SEC. 501. SHORT TITLE.

This subtitle may be cited as the ''Settlement Encouragement and Fairness Act''.

SEC. 502. DEFINITION OF PREVAILING PARTY.

(a) IN GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

''§ 9. Definition of 'prevailing party'

''(a) In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, or of any judicial or administrative rule, which provides for the recovery of attorney's fees, the term 'prevailing party' shall include, in addition to a party who substantially prevails through a judicial or administrative judgment or order, or an enforceable written agreement, a party whose

pursuit of a nonfrivolous claim or defense was a catalyst for a voluntary or unilateral change in position by the opposing party that provides any significant part of the relief sought.

''(b)(1) If an Act, ruling, regulation, interpretation, or rule described in subsection (a) requires a defendant, but not a plaintiff, to satisfy certain different or additional criteria to qualify for the recovery of attorney's fees, subsection (a) shall not affect the requirement that such defendant satisfy such criteria.

''(2) If an Act, ruling, regulation, interpretation, or rule described in subsection (a) requires a party to satisfy certain criteria, unrelated to whether or not such party has prevailed, to qualify for the recovery of attorney's fees, subsection (a) shall not affect the requirement that such party satisfy such criteria.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by adding at the end the following new item:

''9. Definition of 'prevailing party'.''.

(c) APPLICATION.—Section 9 of title 1, United States Code, as added by this Act, shall apply to any case pending or filed on or after the date of enactment of this subtitle.

Subtitle B—Arbitration

SEC. 511. SHORT TITLE.

This subtitle may be cited as the ''Preservation of Civil Rights Protections Act of 2004''.

SEC. 512. AMENDMENT TO FEDERAL ARBITRATION ACT.

Section 1 of title 9, United States Code, is amended by striking ''of seamen'' and all that follows through ''commerce''.

SEC. 513. UNENFORCEABILITY OF ARBITRATION CLAUSES IN EMPLOYMENT CONTRACTS.

(a) PROTECTION OF EMPLOYEE RIGHTS.—Notwithstanding any other provision of law, any clause of any agreement between an employer and an employee that requires arbitration of a dispute arising under the Constitution or laws of the United States shall not be enforceable.

(b) EXCEPTIONS.—

(1) WAIVER OR CONSENT AFTER DISPUTE ARISES.—Subsection (a) shall not apply with respect to any dispute if, after such dispute arises, the parties involved knowingly and voluntarily consent to submit such dispute to arbitration.

(2) COLLECTIVE BARGAINING AGREEMENTS.—Subsection (a) shall not preclude an employee or union from enforcing any of the rights or terms of a valid collective bargaining agreement.

SEC. 514. APPLICATION OF AMENDMENTS.

This subtitle and the amendment made by section 512 shall apply with respect to all employment contracts in force before, on, or after the date of enactment of this subtitle.

Subtitle C—Expert Witness Fees

SEC. 521. PURPOSE.

The purpose of this subtitle is to allow recovery of expert fees by prevailing parties under civil rights fee-shifting statutes.

SEC. 522. FINDINGS.

Congress finds the following:

(1) This subtitle is made necessary by the decision of the Supreme Court in West Virginia University Hospitals Inc. v. Casey, 499 U.S. 83 (1991). In Casey, the Court, per Justice Scalia, ruled that expert fees were not recoverable under section 722 of the Revised Statutes (42 U.S.C. 1988), as amended by the Civil Rights Attorneys' Fees Awards Act of 1976 (Public Law 94–559; 90 Stat. 2641), because the Civil Rights Attorneys' Fees Awards Act of 1976 expressly authorized an award of an ''attorney's fee'' to a prevailing party but said nothing expressly about expert fees.

(2) This subtitle is especially necessary both because of the important roles played by experts in civil rights litigation and because expert fees often represent a major cost of the litigation. In fact, in Casey itself, as pointed out by Justice Stevens in dissent, the district court had found that the expert witnesses were ''essential'' and ''necessary'' to the successful prosecution of the plaintiffs case, and the expert fees were not paltry but amounted to $104,133. Justice Stevens also pointed out that the majority opinion requiring the plaintiff to ''assume the cost of $104,133 in expert witness fees is at war with the congressional purpose of making the prevailing party whole.''. Casey (499 U.S. at 111).

(3) Much of the rationale for denying expert fees as part of the shifting of attorney's fees under provisions of law such as section 722 of the Revised Statutes (42 U.S.C. 1988), whose language does not expressly include expert fees, was based on the fact that many fee-shifting statutes enacted by Congress ''explicitly shift expert witness fees as well as attorney's fees.''. Casey (499 U.S. at 88). In fact, Justice Scalia pointed out that in 1976—the same year that Congress amended section 722 of the Revised Statutes (42 U.S.C. 1988) by providing for the shifting of attorney's fees—Congress expressly authorized the shifting of attorney's fees and of expert fees in the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), the Consumer Product Safety Act (15 U.S.C. 2051 et seq.), the Resource Conservation and Recovery Act of 1976 (Public Law 94–580; 90 Stat. 2795), and the Natural Gas Pipeline Safety Act Amendments of 1976 (Public Law 94–477; 90 Stat. 2073). Casey (499 U.S. at 88). Congress had done the same in other years on dozens of occasions. Casey (499 U.S. at 88–90 & n. 4).

(4) In the same year that the Supreme Court decided Casey, Congress responded quickly but only through the Civil Rights Act of 1991 (Public Law 102–166; 105 Stat. 1071) by amending title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) and section 722 of the Revised Statutes (42 U.S.C. 1988) with express authorizations of the recovery of expert fees in successful employment discrimination litigation. It is long past time to correct, in Federal civil rights litigation, Casey's denial of expert fees.

SEC. 523. EFFECTIVE PROVISIONS.

(a) SECTION 722 OF THE REVISED STATUTES.—Section 722 of the Revised Statutes (42 U.S.C. 1988) is amended—

(1) in subsection (b), by inserting ''(including expert fees)'' after ''attorney's fee''; and

(2) by striking subsection (c).

(b) FAIR LABOR STANDARDS ACT OF 1938.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(c) VOTING RIGHTS ACT OF 1965.—Section 14(e) of the Voting Rights Act of 1965 (42 U.S.C. 1973*l*(e)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(d) FAIR HOUSING ACT.—Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) is amended—

(1) in section 812(p), by inserting ''(including expert fees)'' after ''attorney's fee'';

(2) in section 813(c)(2), by inserting ''(including expert fees)'' after ''attorney's fee''; and

(3) in section 814(d)(2), by inserting ''(including expert fees)'' after ''attorney's fee''.

(e) IDEA.—Section 615(i)(3)(B) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(i)(3)(B)) is amended by inserting ''(including expert fees)'' after ''attorney's fees''.

(f) CIVIL RIGHTS ACT OF 1964.—Section 204(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(b)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(g) REHABILITATION ACT OF 1973.—Section 505(b) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(b)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(h) EQUAL CREDIT OPPORTUNITY ACT.—Section 706(d) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(d)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(i) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 616(a)(3), by inserting ''(including expert fees)'' after ''attorney's fees''; and

(2) in section 617(a)(2), by inserting ''(including expert fees)'' after ''attorney's fees''.

(j) FREEDOM OF INFORMATION ACT.—Section 552(a)(4)(E) of title 5, United States Code, is amended by inserting ''(including expert fees)'' after ''attorney fees''.

(k) PRIVACY ACT.—Section 552a(g) of title 5, United States Code, is amended—

(1) in paragraph (2)(B), by inserting ''(including expert fees)'' after ''attorney fees'';

(2) in paragraph (3)(B), by inserting ''(including expert fees)'' after ''attorney fees''; and

(3) in paragraph (4)(B), by inserting ''(including expert fees)'' after ''attorney fees''.

(l) TRUTH IN LENDING ACT.—Section 130(a)(3) of the Truth in Lending Act (15 U.S.C. 1640(a)(3)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

Subtitle D—Equal Remedies Act of 2004

SEC. 531. SHORT TITLE.

This subtitle may be cited as the ''Equal Remedies Act of 2004''.

SEC. 532. EQUALIZATION OF REMEDIES.

Section 1977A of the Revised Statutes (42 U.S.C. 1981a), as added by section 102 of the Civil Rights Act of 1991, is amended—

(1) in subsection (b)—

(A) by striking paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (3); and

(2) in subsection (c), by striking ''section—'' and all that follows through the period, and inserting ''section, any party may demand a jury trial.''.

TITLE VI—PROHIBITIONS AGAINST SEX DISCRIMINATION

SEC. 601. SHORT TITLE.

This title may be cited as the ''Paycheck Fairness Act''.

SEC. 602. FINDINGS.

Congress makes the following findings:

(1) Women have entered the workforce in record numbers.

(2) Even today, women earn significantly lower pay than men for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions. These pay disparities exist in both the private and governmental sectors. In many instances, the pay disparities can only be due to continued intentional discrimination or the lingering effects of past discrimination.

(3) The existence of such pay disparities—

(A) depresses the wages of working families who rely on the wages of all members of the family to make ends meet;

(B) prevents the optimum utilization of available labor resources;

(C) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of the several States;

(D) burdens commerce and the free flow of goods in commerce;

(E) constitutes an unfair method of competition in commerce;

(F) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce;

(G) interferes with the orderly and fair marketing of goods in commerce; and

(H) in many instances, may deprive workers of equal protection on the basis of sex in violation of the 5th and 14th amendments.

(4)(A) Artificial barriers to the elimination of discrimination in the payment of wages on the basis of sex continue to exist decades after the enactment of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

(B) Elimination of such barriers would have positive effects, including—

(i) providing a solution to problems in the economy created by unfair pay disparities;

(ii) substantially reducing the number of working women earning unfairly low wages, thereby reducing the dependence on public assistance;

(iii) promoting stable families by enabling all family members to earn a fair rate of pay;

(iv) remedying the effects of past discrimination on the basis of sex and ensuring that in the future workers are afforded equal protection on the basis of sex; and

(v) ensuring equal protection pursuant to Congress's power to enforce the 5th and 14th amendments.

(5) With increased information about the provisions added by the Equal Pay Act of 1963 and wage data, along with more effective remedies, women will be better able to recognize and enforce their rights to equal pay for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.

(6) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

SEC. 603. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.

(a) REQUIRED DEMONSTRATION FOR AFFIRMATIVE DEFENSE.—Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended by striking ''(iv) a differential'' and all that follows through the period and inserting the following: ''(iv) a differential based on a bona fide factor other than sex, such as education, training or experience, except that this clause shall apply only if—

''(I) the employer demonstrates that—

''(aa) such factor—

''(AA) is job-related with respect to the position in question; or

''(BB) furthers a legitimate business purpose, except that this item shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice; and

''(bb) such factor was actually applied and used reasonably in light of the asserted justification; and

''(II) upon the employer succeeding under subclause (I), the employee fails to demonstrate that the differential produced by the reliance of the employer on such factor is itself the result of discrimination on the basis of sex by the employer.

An employer that is not otherwise in compliance with this paragraph may not reduce the wages of any employee in order to achieve such compliance.''.

(b) APPLICATION OF PROVISIONS.—Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended by adding at the end the following: ''The provisions of this subsection shall apply to applicants for employment if such applicants, upon employment by the employer, would be subject to any provisions of this section.''.

(c) ELIMINATION OF ESTABLISHMENT REQUIREMENT.—Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended—

(1) by striking '', within any establishment in which such employees are employed,''; and

(2) by striking ''in such establishment'' each place it appears.

(d) NONRETALIATION PROVISION.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(1) by striking ''or has'' each place it appears and inserting ''has''; and

(2) by inserting before the semicolon the following: '', or has inquired about, discussed, or otherwise disclosed the wages of the employee or another employee, or because the employee (or applicant) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or action under section 6(d)''.

(e) ENHANCED PENALTIES.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: ''Any employer who violates section 6(d) shall additionally be liable for such compensatory or punitive damages as may be appropriate, except that the United States shall not be liable for punitive damages.'';

(2) in the sentence beginning ''An action to'', by striking ''either of the preceding sentences'' and inserting ''any of the preceding sentences of this subsection'';

(3) in the sentence beginning ''No employees shall'', by striking ''No employees'' and inserting ''Except with respect to class actions brought to enforce section 6(d), no employee'';

(4) by inserting after the sentence referred to in paragraph (3), the following: ''Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.''; and

(5) in the sentence beginning ''The court in''—

(A) by striking ''in such action'' and inserting ''in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection''; and

(B) by inserting before the period the following: '', including expert fees''.

(f) ACTION BY SECRETARY.—Section 16(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting ''or, in the case of a violation of section 6(d), additional compensatory or punitive damages,'' before ''and the agreement''; and

(B) by inserting before the period the following: '', or such compensatory or punitive damages, as appropriate'';

(2) in the second sentence, by inserting before the period the following: ''and, in the case of a violation of section 6(d), additional compensatory or punitive damages'';

(3) in the third sentence, by striking ''the first sentence'' and inserting ''the first or second sentence''; and

(4) in the last sentence—

(A) by striking ''commenced in the case'' and inserting ''commenced—

''(1) in the case'';

(B) by striking the period and inserting ''; or''; and

(C) by adding at the end the following:

''(2) in the case of a class action brought to enforce section 6(d), on the date on which the individual becomes a party plaintiff to the class action.''.

SEC. 604. TRAINING.

The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 609, shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

SEC. 605. RESEARCH, EDUCATION, AND OUTREACH.

The Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women, including—

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the general public the findings resulting from studies and other materials, relating to eliminating the pay disparities;

(3) sponsoring and assisting State and community informational and educational programs;

(4) providing information to employers, labor organizations, professional associations, and other interested persons on the means of eliminating the pay disparities;

(5) recognizing and promoting the achievements of employers, labor organizations, and professional associations that have worked to eliminate the pay disparities; and

(6) convening a national summit to discuss, and consider approaches for rectifying, the pay disparities.

SEC. 606. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNITION PROGRAM.

(a) GUIDELINES.—

(1) IN GENERAL.—The Secretary of Labor shall develop guidelines to enable employers to evaluate job categories based on objective criteria such as educational requirements, skill requirements, independence, working conditions, and responsibility, including decisionmaking responsibility and de facto supervisory responsibility.

(2) USE.—The guidelines developed under paragraph (1) shall be designed to enable employers voluntarily to compare wages paid for different jobs to determine if the pay scales involved adequately and fairly reflect the educational requirements, skill requirements, independence, working conditions, and responsibility for each such job with the goal of eliminating unfair pay disparities between occupations traditionally dominated by men or women.

(3) PUBLICATION.—The guidelines shall be developed under paragraph (1) and published in the Federal Register not later than 180 days after the date of enactment of this title.

(b) EMPLOYER RECOGNITION.—

(1) PURPOSE.—It is the purpose of this subsection to emphasize the importance of, encourage the improvement of, and recognize the excellence of employer efforts to pay wages to women that reflect the real value of the contributions of such women to the workplace.

(2) IN GENERAL.—To carry out the purpose of this subsection, the Secretary of Labor shall establish a program under which the Secretary shall provide for the recognition of employers who, pursuant to a voluntary job evaluation conducted by the employer, adjust their wage scales (such adjustments shall not include the lowering of wages paid to men) using the guidelines developed under subsection (a) to ensure that women are paid fairly in comparison to men.

(3) TECHNICAL ASSISTANCE.—The Secretary of Labor may provide technical assistance to assist an employer in carrying out an evaluation under paragraph (2).

(c) REGULATIONS.—The Secretary of Labor shall promulgate such rules and regulations as may be necessary to carry out this section.

SEC. 607. ESTABLISHMENT OF THE NATIONAL AWARD FOR PAY EQUITY IN THE WORKPLACE.

(a) IN GENERAL.—There is established the Secretary of Labor's National Award for Pay Equity in the Workplace, which shall be evidenced by a medal bearing the inscription ''Secretary of Labor's National Award for Pay Equity in the Workplace''. The medal shall be of such design and materials, and bear such additional inscriptions, as the Secretary of Labor may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Secretary of Labor, at such time, in such manner, and containing such information as the Secretary may require, including at a minimum information that demonstrates that the business has made substantial effort to eliminate pay disparities between men and women, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Secretary of Labor determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Secretary of Labor, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award under this section with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(d) BUSINESS.—In this section, the term ''business'' includes—

(1)(A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) an entity carrying out a joint program, formed by a combination of any entities described in paragraph (1) or (2).

SEC. 608. COLLECTION OF PAY INFORMATION BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–8) is amended by adding at the end the following:

''(f)(1) Not later than 18 months after the date of enactment of this subsection, the Commission shall—

''(A) complete a survey of the data that is currently available to the Federal Government relating to employee pay information for use in the enforcement of Federal laws prohibiting pay discrimination and, in consultation with other relevant Federal agencies, identify additional data collections that will enhance the enforcement of such laws; and

''(B) based on the results of the survey and consultations under subparagraph (A), issue regulations to provide for the collection of pay information data from employers as described by the sex, race, and national origin of employees.

''(2) In implementing paragraph (1), the Commission shall have as its primary consideration the most effective and efficient means for enhancing the enforcement of Federal laws prohibiting pay discrimination. For this purpose, the Commission shall consider factors including the imposition of burdens on employers, the frequency of required reports (including which employers should be required to prepare reports), appropriate protections for maintaining data confidentiality, and the most effective format for the data collection reports.''.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE VII—PROTECTIONS FOR WORKERS

Subtitle A—Protection for Undocumented Workers

SEC. 701. FINDINGS.

Congress finds the following:

(1) The National Labor Relations Act (29 U.S.C. 151 et seq.) (in this subtitle referred to as the ''NLRA''), enacted in 1935, guarantees the right of employees to organize and to bargain collectively with their employers. The NLRA implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace. The National Labor Relations Board (in this subtitle referred to as the ''NLRB'') was created by Congress to enforce the provisions of the NLRA.

(2) Under section 8 of the NLRA, employers are prohibited from discriminating against employees ''in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization''. (29 U.S.C. 158(a)(3)). Employers who violate these provisions are subject to a variety of sanctions, including reinstatement of workers found to be illegally discharged because of their union support or activity and provision of backpay to those employees. Such sanctions serve to remedy and deter illegal actions by employers.

(3) In Hoffman Plastic Compounds Inc. v. NLRB, 535 U.S. 137 (2002), the Supreme Court held by a 5 to 4 vote that Federal immigration policy, as articulated in the Immigration Reform and Control Act of 1986, prevented the NLRB from awarding backpay to an undocumented immigrant who was discharged in violation of the NLRA because of his support for union representation at his workplace.

(4) The decision in Hoffman has an impact on all employees, regardless of immigration or citizenship status, who try to improve their working conditions. In the wake of Hoffman Plastics, employers may be more likely to report to the Department of Homeland Security minority workers, regardless of their immigration or citizenship status, who pursue claims under the NLRA against their employers. Fear that employers may retaliate against employees that exercise their rights under the NLRA has a chilling effect on all employees who exercise their labor rights.

(5) The NLRA is not the only Federal employment statute that provides for a backpay award as a remedy for an unlawful discharge. For example, courts routinely award backpay to employees who are found to have been discharged in violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) (in retaliation for complaining about a failure to comply with the minimum wage). In the wake of the Hoffman decision, defendant employers will now argue that backpay awards to unlawfully discharged undocumented workers are barred under Federal employment statutes and even under State employment statutes.

(6) Because the Hoffman decision prevents the imposition of sanctions on employers who discriminate against undocumented immigrant workers, employers are encouraged to employ such workers for low-paying and dangerous jobs because they have no legal redress for violations of the law. This creates an economic incentive for employers to hire and exploit undocumented workers, which in turn tends to undermine the living standards and working conditions of all Americans, citizens and noncitizens alike.

(7) The Hoffman decision disadvantages many employers as well. Employers who are forced to compete with firms that hire and exploit undocumented immigrant workers are saddled with an economic disadvantage in the labor marketplace. The unintended creation of an economic inducement for employers to exploit undocumented immigrant workers gives those employers an unfair competitive advantage over employers that treat workers lawfully and fairly.

(8) The Court's decision in Hoffman makes clear that ''any 'perceived deficiency in the NLRA's existing remedial arsenal' must be 'addressed by congressional action[.]' '' Hoffman Plastic Compounds Inc. v. NLRB, 535 U.S. 137, 152 (2002) (quoting Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 904 (1984)). In emphasizing the importance of back pay awards, Justice Breyer noted that such awards against employers ''help[] to deter unlawful activity that both labor laws and immigration laws seek to prevent''. Hoffman Plastic Compounds Inc. v. NLRB, 535 U.S. 137, 152 (2002). Because back pay awards are designed both to remedy the individual's private right to be free from discrimination as well as to enforce the important public policy against discriminatory employment practices, Congress must take the following corrective action.

SEC. 702. CONTINUED APPLICATION OF BACKPAY REMEDIES.

(a) IN GENERAL.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following:

''(4) BACKPAY REMEDIES.—Backpay or other monetary relief for unlawful employment practices shall not be denied to a present or former employee as a result of the employer's or the employee's—

''(A) failure to comply with the requirements of this section; or

''(B) violation of a provision of Federal law related to the employment verification system described in subsection (b) in establishing or maintaining the employment relationship.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any failure to comply or any violation that occurs prior to, on, or after the date of enactment of this title.

Subtitle B—Fair Labor Standards Act Amendments

SEC. 711. SHORT TITLE.

This subtitle may be cited as the ''Workers' Minimum Wage and Overtime Rights Restoration Act of 2004''.

SEC. 712. FINDINGS.

Congress finds the following with respect to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) (in this subtitle referred to as the ''FLSA''):

(1) Since 1974, the FLSA has regulated States with respect to the payment of minimum wage and overtime rates. In Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), the Supreme Court upheld Congress's constitutional authority

to regulate States in the payment of minimum wages and overtime. The prohibitions of the FLSA remain in effect and continue to apply to the States.

(2) Wage and overtime violations in employment remain a serious problem both nationally and among State and other public and private entities receiving Federal financial assistance, and has invidious effects on its victims, the labor force, and the general welfare and economy as a whole. For example, seven State governments have no overtime laws at all. Fourteen State governments have minimum wage and overtime laws; however, they exclude employees covered under the FLSA. As such, public employees, since they are covered under the FLSA are not protected under these State laws. Additionally, four States have minimum wage and overtime laws which are inferior to the FLSA. Further, the Department of Labor continues to receive a substantial number of wage and overtime charges against State government employers.

(3) Private civil suits by the victims of employment law violations have been a crucial tool for enforcement of the FLSA. In Alden v. Maine, 527 U.S. 706 (1999), however, the Supreme Court held that Congress lacks the power under the 14th amendment to the Constitution to abrogate State sovereign immunity to suits for legal relief by individuals under the FLSA. The Federal Government has an important interest in ensuring that Federal financial assistance is not used to facilitate violations of the FLSA, and private civil suits for monetary relief are a critical tool for advancing that interest.

(4) After the Alden decision, wage and overtime violations by State employers remain unlawful, but victims of such violations lack important remedies for vindication of their rights available to all other employees covered by the FLSA. In the absence of the deterrent effect that such remedies provide, there is a great likelihood that State entities carrying out federally funded programs and activities will use Federal financial assistance to violate the FLSA, or that the Federal financial assistance will otherwise subsidize or facilitate FLSA violations.

(5) The Supreme Court has upheld Congress's authority to condition receipt of Federal financial assistance on acceptance by State or other covered entities of conditions regarding or related to the use of those funds, as in Cannon v. University of Chicago, 441 U.S. 677 (1979).

(6) The Court has further recognized that Congress may require State entities, as a condition of receipt of Federal financial assistance, to waive their State sovereign immunity to suits for a violation of Federal law, as in College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666 (1999).

(7) In the wake of the Alden decision, it is necessary, in order to foster greater compliance with, and adequate remedies for violations of, the FLSA, particularly in federally funded programs or activities operated by State entities, to require State entities to consent to a waiver of State sovereign immunity as a condition of receipt of such Federal financial assistance.

(8) The Supreme Court has repeatedly held that State sovereign immunity does not bar suits for prospective injunctive relief brought against State officials acting in their official capacity, as in Ex parte Young (209 U.S. 123 (1908)). The injunctive relief available in such suits under the FLSA will continue to be the same as that which was available under those laws prior to enactment of this subtitle.

SEC. 713. PURPOSES.

The purposes of this subtitle are—

(1) to provide to State employees in programs or activities that receive or use Federal financial assistance the same rights and remedies for practices violating the FLSA as are available to other employees under the FLSA, and that were available to State employees prior to the Supreme Court's decision in Alden v. Maine, 527 U.S. 706 (1999);

(2) to provide that the receipt or use of Federal financial assistance for a program or activity constitutes a State waiver of sovereign immunity from suits by employees within that program or activity for violations of the FLSA; and

(3) to affirm that suits for injunctive relief are available against State officials in their official capacities for violations of the FLSA.

SEC. 714. REMEDIES FOR STATE EMPLOYEES.

Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended by adding at the end the following:

''(f)(1) A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee of that program or activity under this Act for equitable, legal, or other relief authorized under this Act.

''(2) In this subsection, the term 'program or activity' has the meaning given the term in section 309 of the Age Discrimination Act of 1975 (42 U.S.C. 6107).''.

Mr. HARKIN. Mr. President, I am proud to cosponsor the Fairness and Individual Rights Necessary to Ensure a Stronger Society: The Civil Rights Act of 2004, known as the Fairness Act. In recent years. the Supreme Court has worked to chip away at civil rights laws. This legislation is designed to address many of these decisions, particularly with respect to statutes governing recipients of federal assistance.

This bill is important to all Americans because it ensures that everyone will be treated with fairness and equity under the laws of this country. As a longstanding advocate for disability rights, I am particularly pleased that this bill will reverse some decisions that have limited civil rights protections for people with disabilities.

For example, this legislation will reverse some Supreme Court cases which limit the damage awards for intentional discrimination. A recent egregious example is Barnes v. Gorman, 536 U.S. 181, 2002. This case was brought by an individual who used a wheelchair and was forced into a police van that was not equipped with the proper restraints. Despite his objections to the officers, the individual was strapped in with improper belts that came loose, throwing him to the floor. The Supreme Court held that this individual could not seek punitive damages under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act for this mistreatment. The Fairness Act will restore his rights and those of others who have suffered discrimination.

It will also reverse Buchannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources, 532 U.S. 598, 2001. In that case, the defendant had been sued under the ADA and the Fair Housing Act. The Court held that even if the lawsuit causes the defendants to voluntarily make changes, the plaintiff cannot recover attorneys' fees unless he or she has been awarded relief by a court. This case has made it extremely difficult to find attorneys to take disability cases.

The Fairness Act will also clarify that passengers with disabilities may sue for violations of the Air Carriers Access Act, ACCA, and its regulations. A circuit court recently applied the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. to prohibit suits under the ACAA. Congress intended that individuals have the ability to seek redress for violations of this statute.

The bill, however, does not address individuals with disabilities in some areas because Congress already has provided clear protection for them. So, for example, Congress has clearly indicated that a private right of action exists to enforce disparate impact disability-based discrimination under Section 504 of the Rehabilitation Act. Congress approved of the regulations promulgated to implement section 504 and incorporated these regulations into the statutory requirements of the Americans with Disabilities Act of 1990.

The bill also does not address the disability-specific negative decisions of the Supreme Court. These decisions have undermined the ADA by dramatically narrowing those who are covered under the Act and imposing other restrictions. As the lead sponsor of the ADA in the Senate, I believe that these cases directly conflict with congressional intent. I am working with the disability community and others to address these cases.

The Fairness Act is aptly named. It is designed to ensure that everyone is treated equally under the law and that America will be a Nation that protects and enforces the civil rights of all its citizens.

By Mr. FRIST (for himself, Ms. LANDRIEU, Mr. COCHRAN, Mr. DEWINE, Mr. BOND, Mr. WARNER, Mr. TALENT, and Mrs. HUTCHISON):

S. 2091. A bill to improve the health of health disparity population; to the Committee on Health, Education, Labor, and Pensions.

Mr. FRIST. Mr. President, I am proud to join today with Senator MARY LANDRIEU, Senator THAD COCHRAN, Senator MIKE DEWINE, Senator CHRISTOPHER BOND, Senator JAMES TALENT, Senator JOHN WARNER, and Senator KAY BAILEY HUTCHISON to introduce the ''Closing the Health Care Gap Act of 2004.''

Earlier today, I was pleased to be joined at a press conference by an impressive array of leaders in this fight—Dr. Louis Sullivan, Dr. Rene Rodriguez, Dr. Randall Maxey, Dr. John Maupin, and Dr. James Gavin. I appreciate their support for this legislation, and also appreciate the support

of other national leaders committed to closing the health care disparity gap in America.

Last May, in a speech to graduating students and families at Morehouse University's School of Medicine, I outlined a framework for action to combat disparities. Since then, I have reached out broadly and worked with a wide range of stakeholders and leaders to gather their input and ideas to ensure the legislation we are introducing today includes the best possible strategies to eliminate health disparities. I am also proud to be joined today by a number of colleagues who are committed to this cause. I particularly want to thank Senator LANDRIEU for working across party lines on this bipartisan legislation.

As former Surgeon General Louis W. Sullivan, MD, said at a press briefing earlier today on this legislation, ''[e]thnic minorities represent the fastest growing segment of the U.S. population, and therefore, it is critical that we have a sustained and coordinated commitment to addressing this national problem. The ''Closing the Health Care Gap Act'' seeks to do that. . .''

This legislation builds on past bipartisan efforts to address disparities in our health care system—most importantly, the ''Minority Health and Health Disparities Research and Education Act of 2000,'' which I authored with Senator EDWARD KENNEDY.

The legislation we are introducing today goes much farther.

Over recent years, we have made tremendous advances in our knowledge of and fight against disease. But we know that millions of Americans still experience disparities in health outcomes as a result of ethnicity, race, gender, or limited access to quality health care. For example, disparity populations exhibit poorer health outcomes and have higher rates of HIV/AIDS, diabetes, infant mortality, cancer, heart disease, and other illnesses.

African Americans and Native Americans die younger than any other racial or ethnic group.

African Americans and Native American babies die at significantly higher rates than the rest of the population.

African Americans, Native Americans, and Hispanic Americans are at least twice as likely to suffer from diabetes and experience serious complications from diabetes.

These gaps are simply unacceptable in America today. Let me repeat, they are unacceptable. And, today, we begin a new and aggressive effort to address these inequities.

The root causes of the health care disparities are multiple and certainly complex. That is why we need a broad and comprehensive approach to reduce and eliminate these disparities. This legislation takes a bold step in that direction.

Many of our Nation's smartest minds have examined this problem in detail. The Institute of Medicine (IOM) in its landmark report ''Unequal Treatment,'' concluded that health care disparities are caused by socioeconomic factors, language barriers, access to services problems, behavioral risk factors, and cultural issues including, unfortunately, mistrust and misunderstanding of some patients toward the health care system.

The ''Closing the Health Care Gap Act'' directly addresses the root causes of health care disparities by focusing on five key areas: expanding access to quality health care; strengthening national leadership efforts and coordination; helping increase the diversity of health professionals; promoting more aggressive health professional education intended to reduce barriers to care; and enhancing research to identify sources of racial, ethnic, and geographic disparities and assess promising intervention strategies.

More specifically, this bill: promotes improved understanding of the quality of health care delivered to racial and ethnic minorities and health disparity populations; improves collection and reporting of data on the health care of racial and ethnic minorities and health disparity populations; reduces some of the fragmentation of health care delivery experienced by disparity populations; strengthens the doctor-patient relationship by providing a series of tools to improve communication and continuity of care; supports the use of community health workers; supports the implementation of multidisciplinary treatment and preventive care teams; improves education and information to allow patients to better manage and control their own care; and increases the proportion of racial and ethnic minorities among health professionals.

It is important that we act, as well, because health care disparities magnify many of the quality deficiencies in our overall health care system. This point was well documented by the IOM in a series of reports issued during the past several years. Therefore, the bill takes aggressive steps to improve the quality of health care for all Americans.

A key part of this effort necessarily involves the need to strive for greater standardization of health data collection. At the same time, we must ensure that this information allows us to better identify and address gaps in our health care system by including important information about patients' race and ethnicity.

While the Federal Government has a critical role to play, it is important to remember that government alone is incapable of closing the care and treatment gaps which exist in our health care system. Therefore, the legislation promotes partnerships between the Government and the private sector, and fosters collaboration at the community level to improve care, as well as access to care.

The bill expands access to quality health care for minority and underserved patients through a community-based model that seeks to help patients utilize health coverage that may be available, to provide health system patient navigator services so that they may best utilize available coverage, to emphasize health awareness, prevention and health literacy efforts so that patients can effectively take part in their or their children's treatment decisions, and to improve chronic disease management.

Turning our back on these health disparity problems would be a national failure. Every American deserves the best quality of health care possible, regardless of their race, ethnicity, gender, or where they live.

Again, I appreciate the commitment of many of my colleagues. Together, I know we can make great progress against this critical problem.

There is a growing awareness on the national level of the existence and importance of the serious disparities in the quality of health care that many minority and underserved Americans receive. This presents us with an important opportunity to move forward.

My intention is to continue to build this national awareness, which can provide the basis for bipartisan efforts to fight and reduce these disparities. Today's bipartisan bill introduction represents a key step in this process.

I would like to very quickly thank some of the organizations that are supporting this bill: Interamerican College of Physicians and Surgeons, National Hispanic Medical Association, National Medical Association, The National Conference for Community and Justice, The Association of Minority Health Professions Schools, National Urban League, American Association of Family Physicians, National Patient Advocate Foundation, National Association of Community Health Centers, Health Choice Network, National Association of Public Hospitals, American Hospital Association, The Endocrine Society, St. Thomas Health Services, Ascension Health, The American Society of Transplantation.

With this strong base of initial support, the broad consensus that is beginning to emerge on this issue, and the bipartisan commitment of so many, it is my hope that we can make real progress toward eliminating health care disparities and end—once and for all—this intolerable blight on our Nation.

By Mrs. HUTCHISON (for herself, Mr. BROWNBACK, Mr. BUNNING, Mr. CHAMBLISS, and Mr. COCHRAN):

S. 2093. A bill to maintain full marriage tax penalty relief for 2005; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill to continue relief from the marriage penalty—the most egregious, antifamily provision of the Tax Code. One of my highest priorities in the U.S. Senate has been to relieve American taxpayers of this punitive burden.

Last year, I worked with my colleagues and President Bush to pass a $350 billion jobs and economic growth package to put Americans back to work and stimulate the economy. We are now seeing the fruits of our efforts. The tax relief has left more money in the pockets of individuals and small businesses, freeing the engines of the economy. Private sector growth is strong, the stock market is up, and jobs are being created.

One of the most important provisions of the legislation provided immediate marriage penalty relief by raising the standard deduction and enlarging the 15-percent tax bracket for married joint filers to twice that of single filers. This provision will save 34 million married couples an average of almost $600 on their 2003 tax bills.

Enacting marriage penalty relief was a giant step for tax fairness, but it may be fleeting. Even as people begin to feel the benefits from the relief, a tax increase looms in the near future. Since the bill was restricted by limitations imposed by Congress, the marriage penalty provisions will only be in effect for 2 years. In 2005, marriage will again be a taxable event for millions of Americans.

Without relief, 48 percent of married couples will again pay more in taxes.

Even as the economy strengthens, many families face difficult choices in making ends meet. We must make sure we do not backtrack on this important reform.

The benefits of marriage are well established, but without marriage penalty relief, the Tax Code provides a significant disincentive for people to walk down the aisle. Marriage is a fundamental institution in our society and should not be discouraged by the IRS. Children living in a married household are far less likely to live in poverty or to suffer from child abuse. Research indicates they are less likely to be depressed or have developmental problems. Scourges such as adolescent drug use are less common in married families, and married mothers are less likely to be victims of domestic violence.

I have sought to make full marriage penalty relief permanent. However, given the current budget constraints and the politics of an election year, this will be difficult. I therefore am offering this bill to extend last year's victory for married couples for 1 year, through 2005.

As Valentine's Day approaches, we should celebrate marriage, not penalize it. We cannot be satisfied until couples never again must decide between love and money. Marriage should not be a taxable event.

I call on the Senate to build on the 2003 tax cuts and say ''I do'' to extending marriage penalty relief today.

Mr. President, I ask unanimous consent that a copy 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. 2093

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 ''Marriage Penalty Relief Extension Act of 2004''.

SEC. 2. FULL ELIMINATION OF THE MARRIAGE PENALTY FOR 2005.

(a) STANDARD DEDUCTION.—Paragraph (7) of section 63(c) of the Internal Revenue Code of 1986 (relating to applicable percentage) is amended by striking ''174'' and inserting ''200''.

(b) 15-PERCENT BRACKET.—Subparagraph (B) of section 1(f)(8) of the Internal Revenue Code of 1986 (relating to applicable percentage) is amended by striking ''180'' and inserting ''200''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(d) APPLICATION OF EGTRRA SUNSET TO THIS SECTION.—Each amendment made by this section shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

By Mr. CAMPBELL:

S.J. Res. 27. A joint resolution recognizing the 60th anniversary of the Allied landing at Normandy during World War II; to the Committee on the Judiciary.

Mr. CAMPBELL. Mr. President, it is a privilege to introduce a joint resolution commemorating the 60th anniversary of the June 6, 1944 landings in Normandy that paved the way for the liberation of Europe. Operation Overlord, code named D-Day, was the culmination of months of planning and strategic air attacks. Under cover of darkness 18,000 British and American airborne forces were deployed in the initial phase of the operation commanded by Supreme Allied Commander General Dwight D. Eisenhower. Combined Allied forces landed at Utah, Omaha, Gold, Juno and Sword as part of the largest air, land, and sea invasion ever undertaken. In all, over 5,000 ships and landing craft, 10,000 airplanes and 150,000 Allied forces took part in the operation.

An estimated 70,000 Americans took part in D-Day operations, including 225 U.S. Rangers who scaled the cliffs at Pointe du Hoc to capture German heavy artillery emplacements. American troops also landed at Utah beach, and at Omaha beach where they faced a myriad of challenges, including high seas, mines and elite German infantry forces.

In a radio address and prayer to the American people on the evening of June 6, President Franklin D. Roosevelt laid out the mission undertaken by G.I.s and Allied forces: ''They fight not for the lust of conquest, They fight to liberate. They fight to let justice arise, and tolerance and goodwill among all Thy people. They yearn but for the end of battle, for their return to the haven of home.'' During the evening of June 6, 1944 church bells tolled throughout America and in Philadelphia the Liberty Bell was rung as Americans awaited word from the rocky battlefield of northern France.

On that fateful day, 1,465 Americans laid down their lives on the field of battle. Another 3,184 were wounded, 1,928 missing, and 26 captured. In the days and weeks to follow, thousands more would spill their blood on French soil to liberate Europe. D-Day ushered in a series of battles over the next three months until the liberation of Paris in late August 1944.

In a very real sense, the fate of Europe hung in the balance of the success or failure of the D-Day operations. As a senior member of the Committee on Veterans Affairs, I am especially mindful of the tremendous sacrifice made by those men and women of the uniformed services who served with distinction at D-Day and throughout the course of World War II. Almost forty percent of U.S. service men and women were volunteers, with the duration of service for all troops averaging 33 months. Nearly 300,000 Americans made the supreme sacrifice during World War II, including the valiant troops that took part in D-Day.

I would take this opportunity to recognize the World War II military service of current members of the United States Senate: the Senator from Hawaii, Mr. INOUYE; the Senator from South Carolina, Mr. HOLLINGS; the Senator from Alaska, Mr. STEVENS; the Senator from Virginia, Mr. WARNER; the Senator from New Jersey, Mr. LAUTENBERG; and the Senator from Hawaii, Mr. AKAKA.

As Chairman of the Commission on Security and Cooperation in Europe, I had the privilege to lead a delegation of colleagues to the Normandy American Cemetery in July 2001, where we participated in ceremonies honoring Americans killed in D-Day operations. Maintained by the American Battle Monuments Commission, the cemetery is the final resting place for 9,386 American service men and women and honors the memory of the 1,557 missing. The superintendent of the cemetery noted that each year the sea surrenders the remains of Americans who fought and died in the service of freedom at home and abroad.

The Normandy American Cemetery, Mr. President, is the resting place for 100 Coloradans who gave their lives on the field of battle. From Toffoli and Sweeney to Martinez the roster is a testament to diversity of those from my home state of Colorado who answered the call to defend freedom along the rocky coast of a distant land.

I urge my colleagues to act quickly on this resolution which will commemorate the 60th anniversary of D-Day and honor those who so bravely served in that effort.

I ask unanimous consent that the text of the resolution be printed in the RECORD.

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

S.J. RES. 27

Whereas June 6, 2004, marks the 60th anniversary of D-Day, the first day of the Allied landing at Normandy during World War II by American, British, and Canadian troops;

Whereas the D-Day landing, known as Operation Overlord, was the most extensive amphibious operation ever to occur, involving on the first day of the operation 5,000 naval vessels, more than 11,000 sorties by Allied aircraft, and 153,000 soldiers, sailors, and airmen of the Allied Expeditionary Force;

Whereas the bravery and sacrifices of the Allied troops at 5 separate Normandy beaches and numerous paratrooper and glider landing zones began what Allied Supreme Commander Dwight D. Eisenhower called a ''Crusade in Europe'' to end Nazi tyranny and restore freedom and human dignity to millions of people;

Whereas that great assault by sea and air marked the beginning of the end of Hitler's ambition for world domination;

Whereas American troops suffered over 6,500 casualties on D-Day; and

Whereas the people of the United States should honor the valor and sacrifices of their fellow countrymen, both living and dead, who fought that day for liberty and the cause of freedom in Europe: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) recognizes the 60th anniversary of the Allied landing at Normandy during World War II; and

(2) requests the President to issue a proclamation calling on the people of the United States to observe the anniversary with appropriate ceremonies and programs to honor the sacrifices of their fellow countrymen to liberate Europe.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 302—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES SHOULD NOT SUPPORT THE FEBRUARY 20, 2004, ELECTIONS IN IRAN AND THAT THE UNITED STATES SHOULD SEEK A GENUINE DEMOCRATIC GOVERNMENT IN IRAN THAT WILL RESTORE FREEDOM TO THE IRANIAN PEOPLE AND WILL ABANDON TERRORISM

Mr. BROWNBACK (for himself, Mr. LEAHY, Mr. DEWINE, Mr. MCCAIN, Mr. WYDEN, Mr. BAYH, Mr. KYL, Mr. INHOFE, Mr. COLEMAN, Ms. LANDRIEU, and Mr. CHAMBLISS) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 302

Whereas there is a long history of mutual affection, appreciation, and respect between the people of the United States and the people of Iran, including the incalculable efforts by the United States in providing humanitarian, financial, and technological assistance to help the people of Iran;

Whereas the people of Iran have shown support for decency and freedom, and solidarity with the United States, including the demonstration of such support through candlelight vigils attended by the youth of Iran in the wake of the September 11, 2001, attacks upon the United States;

Whereas the Council of Guardians is a 12-member unelected body, composed of the most extreme anti-American, anti-democratic clerics, that has arbitrarily disqualified thousands of candidates, including sitting Members of the Parliament of Iran and members of the reformist movement;

Whereas the elections scheduled to be held on February 20, 2004, in Iran are fatally flawed;

Whereas the Council of Guardians has barred candidates solely for failing to demonstrate blind loyalty to Supreme Leader Ayatollah Khamenei;

Whereas the brave efforts of the people of Iran to promote greater democracy and respect for human rights are being thwarted by the actions of the Council of Guardians;

Whereas the blatant interference of the Council of Guardians in the electoral process ensures that the elections scheduled for February 20, 2004, will be neither free nor fair; and

Whereas the circumstances in Iran clearly demonstrate that authentic pro-democratic reform within the regime of Iran is not possible: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should not legitimize or support the elections in Iran scheduled to take place on February 20, 2004, as such elections stifle the growth of the genuine democratic forces in Iran and do not serve the national security interest of the United States;

(2) the support provided by the United States to Iran should be provided to the people of Iran, and not to any political figure who supports the preservation of the current regime; and

(3) the policy of the United States should be to seek a genuine democratic government in Iran that will restore freedom to the people of Iran, will abandon terrorism, will protect human rights, and will live in peace and security with the international community.

SENATE RESOLUTION 303—COMMENDING THE CARROLL COLLEGE FIGHTING SAINTS FOOTBALL TEAM FOR WINNING THE 2003 NATIONAL ASSOCIATION OF INTERCOLLEGIATE ATHLETICS (NAIA) NATIONAL FOOTBALL CHAMPIONSHIP GAME

Mr. BURNS (for himself and Mr. BAUCUS) submitted the following resolution; which was considered and agreed to:

S. RES. 303

Whereas the Carroll College Fighting Saints football team won the 2003 NAIA national championship game and its second straight national championship by defeating the Northwestern Oklahoma State University Rangers by a score of 41 to 28 at the Jim Carroll Stadium in Savannah, Tennessee, on December 20, 2003;

Whereas the Fighting Saints won 15 straight games, going undefeated in the 2003 regular season to win the Frontier Conference Championship and progressing through 4 rounds of playoffs;

Whereas head coach Mike Van Diest led the Fighting Saints to their second straight championship in his fifth season as head coach and was 1 of 5 coaches to receive the American Football Coaches Association Coach of the Year award;

Whereas Fighting Saints quarterback Tyler Emmert was named NAIA Player of the Year and offensive MVP for the championship game;

Whereas wide receiver Mark Gallik was named NAIA Football.net Offensive Player of the Year;

Whereas both Emmert and Gallik were named to the NAIA First Team All-American;

Whereas 2 players were named to the NAIA Second Team All-American—Spencer Schmitz and Marcus Atkinson—and 4 players received NAIA Honorable Mention All-American honors—Regan Mack, Rhett Crites, Nate Chiovaro, and Brett Bermingham;

Whereas 7 Fighting Saints were named as NAIA All-America Scholar Athletes—Kyle Baker, D.J. Dearcorn, Tyler Emmert, Kevin McCutcheon, Matt Peterson, A.J. Porrini, and Zach Zawacki; and

Whereas the Carroll College community, including the Carroll College Athletic Department, students, administration, board of trustees, faculty, and alumni, the city of Helena, and the entire State of Montana, are to be congratulated for their continuous support of the Carroll College football team: Now, therefore, be it

Resolved, That the Senate—

(1) commends the Carroll College Fighting Saints football team for winning the 2003 NAIA national championship;

(2) recognizes the achievements of all the players, coaches, support staff, and fans who were instrumental in helping Carroll College during the 2003 season; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to the president of Carroll College.

SENATE RESOLUTION 304—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES SHOULD NOT SUPPORT THE FEBRUARY 20, 2004, ELECTIONS IN IRAN AND THAT THE UNITED STATES SHOULD ADVOCATE DEMOCRATIC GOVERNMENT IN IRAN THAT WILL RESTORE FREEDOM TO THE IRANIAN PEOPLE AND WILL ABANDON TERRORISM

Mr. BROWNBACK (for himself, Mr. LEAHY, Mr. BIDEN, and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 304

Whereas there is a long history of mutual affection, appreciation, and respect between the people of the United States and the people of Iran, including the incalculable efforts by the United States in providing humanitarian, financial, and technological assistance to help the people of Iran;

Whereas the people of Iran have shown support for decency and freedom, and solidarity with the United States, including the demonstration of such support through candlelight vigils attended by the youth of Iran in the wake of the September 11, 2001, attacks upon the United States;

Whereas the Council of Guardians is a 12-member unelected body, that has arbitrarily disqualified thousands of candidates, including sitting Members of the Parliament of Iran and members of the reformist movement;

Whereas the elections scheduled to be held on February 20, 2004, in Iran are fatally flawed;

Whereas the brave efforts of the people of Iran to promote greater democracy and respect for human rights are being thwarted by the actions of the Council of Guardians;

Whereas the blatant interference of the Council of Guardians in the electoral process

ensures that the elections scheduled for February 20, 2004, will be neither free nor fair; and

Whereas the circumstances in Iran clearly call into serious question whether pro-democratic reform within the regime of Iran is not possible: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should not support the elections in Iran scheduled to take place on February 20, 2004, as such elections stifle the growth of the democratic forces in Iran and do not serve the national security interest of the United States;

(2) the support provided by the United States to Iran should be provided to the people of Iran; and

(3) the policy of the United States should be to advocate a democratic government in Iran that will restore freedom to the people of Iran, will abandon terrorism, will protect human rights, and will live in peace and security with the international community.

SENATE CONCURRENT RESOLUTION 89—EXPRESSING THE SENSE OF THE CONGRESS WITH RESPECT TO THE CONTINUITY OF THE PRESIDENCY

Mr. CORNYN (for himself and Mr. LOTT) submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 89

Resolved by the Senate (the House of Representatives concurring), It is the sense of Congress that during the period preceding the end of a term of office in which a President will not be serving a succeeding term—

(1) that President should submit the nominations of individuals to the Senate who are selected by the President-elect for offices that fall within the line of succession;

(2) the Senate should conduct confirmation hearings and a Senate floor vote on the nominations described under paragraph (1), to the extent feasible, between January 3 and January 20 before the Inauguration; and

(3) that President should agree to sign and deliver commissions on January 20 before the Inauguration of all approved nominations, to ensure continuity of Government.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2558. Mrs. MURRAY (for herself, Ms. COLLINS, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. SCHUMER, Ms. SNOWE, and Mr. STEVENS) submitted an amendment intended to be proposed to amendment SA 2491 submitted by Mrs. MURRAY (for herself, Ms. COLLINS, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. COCHRAN, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. SCHUMER, Ms. SNOWE, and Mr. STEVENS) and intended to be proposed to the bill S. 1072, 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 2559. Mrs. MURRAY (for herself, Ms. COLLINS, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. SCHUMER, Ms. SNOWE, and Mr. STEVENS) submitted an amendment intended to be proposed to amendment SA 2492 submitted by Mrs. MURRAY (FOR HERSELF, Ms. COLLINS, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. COCHRAN, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. SCHUMER, Ms. SNOWE, AND Mr. STEVENS) AND INTENDED TO BE PROPOSED TO THE BILL S. 1072, SUPRA; WHICH WAS ORDERED TO LIE ON THE TABLE.

SA 2560. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2561. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2562. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2563. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2564. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2565. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2566. Mr. GRASSLEY (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2549 submitted by Mr. GRASSLEY (for himself and Mr. BAUCUS) and intended to be proposed to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2567. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2568. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2569. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2570. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2571. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2572. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2573. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2574. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2575. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2576. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2577. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2578. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2579. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2580. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2581. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2582. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2583. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2584. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2315 submitted by Mr. KYL and intended to be proposed to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2585. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2315 submitted by Mr. KYL and intended to be proposed to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2586. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2511 submitted by Mr. DASCHLE and intended to be proposed to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2587. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2382 submitted by Mr. McCain (for himself and Mr. HOLLINGS) and intended to be proposed to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2588. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2418 submitted by Mr. CARPER and intended to be proposed to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2589. Mr. CONRAD submitted an amendment intended to be proposed to amendment SA 2414 submitted by Mr. NICKLES and intended to be proposed to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2590. Mr. ROCKEFELLER (for himself, Mr. BURNS, and Mr. DORGAN) submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2591. Mr. INHOFE proposed an amendment to amendment SA 2388 proposed by Mrs. HUTCHISON (for herself, Mr. KYL, Mr. LEVIN, Mr. GRAHAM of Florida, Mr. McCain, Ms. STABENOW, and Mrs. FEINSTEIN) to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra.

SA 2592. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2593. Mr. HOLLINGS (for himself and Mr. CARPER) submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2594. Mr. HOLLINGS (for himself and Mr. CARPER) submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2595. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2596. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2597. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2598. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2599. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2600. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2601. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2602. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2603. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2604. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2605. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 2388 proposed by Mrs. HUTCHISON (for herself, Mr. KYL, Mr. LEVIN, Mr. GRAHAM of Florida, Mr. MCCAIN, Ms. STABENOW, and Mrs. FEINSTEIN) to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2606. Mr. BURNS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2607. Mr. BURNS submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2608. Mr. BURNS (for himself, Mr. DORGAN, and Mr. ROCKEFELLER) submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2609. Mr. BURNS (for himself, Mr. DORGAN, and Mr. ROCKEFELLER) submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2610. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2611. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2612. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2613. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2614. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2615. Ms. LANDRIEU (for herself, Mr. BREAUX, Mrs. LINCOLN, and Mr. PRYOR) submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra.

SA 2616. Mr. INHOFE proposed an amendment to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra.

TEXT OF AMENDMENTS

SA 2558. Mrs. MURRAY (for herself, Ms. COLLINS, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. SCHUMER, Ms. SNOWE, and Mr. STEVENS) submitted an amendment intended to be proposed to amendment SA 2491 submitted by Mrs. MURRAY (for herself, Ms. COLLINS, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. COCHRAN, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. SCHUMER, Ms. SNOWE, and Mr. STEVENS) and intended to be proposed to the bill S. 1072, 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 38, strike line 22 and all that follows through page 39, line 7, and insert the following:

(13) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.—For carrying out the infrastructure performance and maintenance program under section 139 of that title $1,328,000,000 for fiscal year 2004.

(14) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—For construction of ferry boats and ferry terminal facilities under section 147 of that title, $150,000,001 for each of fiscal years 2004 through 2009.

SA 2559. Mrs. MURRAY (for herself, Ms. COLLINS, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. SCHUMER, Ms. SNOWE, and Mr. STEVENS) submitted an amendment intended to be proposed to amendment SA 2492 submitted by Mrs. MURRAY (for herself, Ms. COLLINS, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. COCHRAN, Mr. CORZINE, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. SCHUMER, Ms. SNOWE, and Mr. STEVENS) and intended to be proposed to the bill S. 1072, 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 80, strike line 7 and all that follows through page 81, line 3, and insert the following:

SEC. 1204. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL AND MAINTENANCE FACILITIES.

(a) IN GENERAL.—Section 147 of title 23, United States Code, is amended to read as follows:

"§ 147. Construction of ferry boats and ferry terminal and maintenance facilities

''(a) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal and maintenance facilities in accordance with section 129(c).

''(b) FEDERAL SHARE.—The Federal share of the cost of construction of ferry boats and ferry terminals and maintenance facilities under this section shall be 80 percent.

''(c) ALLOCATION OF FUNDS.—The Secretary shall give priority in the allocation of funds under this section to those ferry systems, and public entities responsible for developing ferries, that—

''(1) carry the greatest number of passengers and vehicles;

''(2) carry the greatest number of passengers in passenger-only service; or

''(3) provide critical access to areas that are not well-served by other modes of surface transportation.

''(d) SET-ASIDE.—Of the amounts made available under section 1101(a)(14) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, $112,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out this section.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 129(c) of title 23, United States Code, is amended—

(A) in the matter preceding paragraph (1), by inserting ''and maintenance'' after ''terminal''; and

(B) in paragraph (3), by inserting ''or maintenance'' after ''terminal'' each place it appears.

(2) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 147 and inserting the following:

''147. Construction of ferry boats and ferry terminal and maintenance facilities.''.

(3) Section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2005) is repealed.

SA 2560. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

(h) HIGHWAY TRUST FUND EXPENDITURES FOR HIGHWAY USE TAX EVASION PROJECTS.—Section 9503(c), as amended by this Act, is amended to add at the end the following new paragraph:

''(5) HIGHWAY USE TAX EVASION PROJECTS.—From amounts available in the Highway Trust Fund, there is authorized to be expended—

''(A) for each fiscal year after 2003 to the Internal Revenue Service—

''(i) $30,000,000 for enforcement of fuel tax compliance, including the per-certification of tax-exempt users,

''(ii) $10,000,000 for Xstars, and

''(iii) $10,000,000 for xfirs, and

''(B) for each fiscal year after 2003 to the Federal Highway Administration, $50,000,000 to be allocated $1,000,000 to each State to combat fuel tax evasion on the State level.''.

SA 2561. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1072, 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 2, after line 14, insert the following new section:

SEC. 4. CLARIFICATION OF RAIL TRANSPORTATION POLICY.

Section 10101 is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''In regulating''; and

(2) by adding at the end the following:

''(b) PRIMARY OBJECTIVES.—The primary objectives of the rail transportation policy of the United States are as follows:

''(1) To promote effective competition among rail carriers at origins and destinations.

''(2) To maintain reasonable rates in the absence of effective competition.

''(3) To maintain consistent and efficient rail transportation service for shippers, including the timely provision of rail cars requested by shippers.

''(4) To ensure that smaller carload and intermodal shippers are not precluded from accessing rail systems due to volume requirements.''.

SA 2562. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1072, 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 2, after line 14, insert the following new section:

SEC. 4. RAIL CUSTOMER ADVOCATE IN THE DEPARTMENT OF TRANSPORTATION.

(a) PARTICIPATION OF RAIL CUSTOMER ADVOCATE IN STB PROCEEDINGS.—

(1) AUTHORITY AND RESPONSIBILITIES.—Chapter 105 is amended by adding at the end the following new section:

''§ 10503. Participation of Rail Customer Advocate in Board proceedings

''(a) AUTHORITY.—The following persons are authorized to petition the Board for an exercise of authority of the Board regarding rail transportation of any agricultural or forestry commodity or product, and to participate in any proceeding of the Board regarding rail transportation of such a commodity or product:

''(1) The Rail Customer Advocate of the Department of Transportation.

''(2) Any official of the government of a State whose functions are the same as or similar to the functions of the Rail Customer Advocate of the Department of Transportation.

''(b) CONSIDERATION OF PRESENTATIONS BY ADVOCATE.—(1) The Board shall accord significant persuasive weight to any material evidence, proposal, or view that is presented by an official referred to in subsection (a) with respect to rail transportation of an agricultural or forestry commodity or product.

''(2) In disposing of any matter before the Board in which an official referred to in subsection (a) has participated under the authority of such subsection, the Board shall present in writing a detailed explanation of any disagreement of the Board with matters presented to the Board by that official.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''10503. Participation of Rail Customer Advocate in Board proceedings.''.

(b) ESTABLISHMENT AND DUTIES.—

(1) IN GENERAL.—The Department of Transportation Reorganization Act is amended by adding at the end the following new section:

''SEC. 286. RAIL CUSTOMER ADVOCATE.

''(a) ESTABLISHMENT OF OFFICE.—There is established within the Department an Office of Rail Customer Advocacy.

''(b) RAIL CUSTOMER ADVOCATE.—

''(1) APPOINTMENT.—The Secretary shall appoint the Rail Customer Advocate.

''(2) HEAD OF OFFICE.—The Rail Customer Advocate is the head of the Office of Rail Customer Advocacy.

''(c) FUNCTIONS.—The Rail Customer Advocate has the following functions:

''(1) PARTICIPATION IN STB PROCEEDINGS.—To participate as a party in proceedings of the Surface Transportation Board on petitions for action by the Board regarding the regulation of rail transportation of agricultural or forestry commodities or products, and to initiate any such action.

''(2) COMPILATION OF INFORMATION.—To collect, compile, and maintain information regarding the cost and efficiency of rail transportation of agricultural commodities and products and forestry commodities and products.

''(3) STUDIES.—To perform studies regarding rail transportation of agricultural commodities and products and forestry commodities and products.

''(d) ACCESS TO STB INFORMATION.—To carry out the functions under subsection (b), the Rail Customer Advocate shall have access to information, including databases, of the Surface Transportation Board.''.

(B) in paragraph (5), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(6) the establishment of the Office of Rail Consumer Advocacy of the Department under section 286.''.

SA 2563. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1072, 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 2, after line 14, insert the following new section:

SEC. 4. PERIODIC STUDY OF COMPETITION AMONG RAIL CARRIERS.

(a) REQUIREMENT FOR STUDY.—

(1) TRIENNIAL STUDY.—Chapter 101 is amended by adding at the end the following new section:

''§ 10103. Periodic study of rail carrier competition and processes of the Board

''(a) REQUIREMENT FOR STUDY.—Every three years, the Secretary of Transportation shall conduct a comprehensive study of rail carrier competition and the processes of the Board. The study shall include an assessment of the following:

''(1) The availability of effective competitive options among and between rail carriers.

''(2) The effectiveness of the processes of the Surface Transportation Board, including the process used for determining the reasonableness of rates of rail carriers.

''(3) The availability to rail users of effective regulatory dispute resolution options.

''(b) STUDY TO INCLUDE ASSESSMENT OF RAIL-TO-RAIL COMPETITION.—In carrying out the study, the Board shall assess the overall level of rail-to-rail competition in the rail carrier industry in the United States. In making the assessment, the Board shall consider the views of users of the services of rail carriers.

''(c) REPORT TO CONGRESS.—Not later than November 15 of each year in which a study is conducted under subsection (a), the Secretary shall submit a report on the results of the study to Congress. The report shall include the following:

''(1) The Board's assessment of the overall level of rail-to-rail competition in the rail carrier industry in the United States.

''(2) The markets that have limited rail-to-rail competition.

''(3) Any recommendations for enhancing rail-to-rail competition, particularly in markets identified as having limited rail-to-rail competition.

''(4) An assessment of the Board's performance of its purpose to promote and enhance competition among and between railroads by—

''(A) addressing complaints regarding rates, charges, and service; and

''(B) promulgating regulations of general applicability or taking other actions.

''(5) Any recommendations for modification of any of the decisions of the Board (or decisions of the former Interstate Commerce Commission continuing in effect) or for modification of the general authority or jurisdiction of the Board.

''(6) Any other findings, analyses, assessments, and recommendations that result from the study.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

''10103. Periodic study of rail carrier competition and processes of the Board.''.

(b) TIME FOR FIRST STUDY.—The first study under section 10103 of title 49, United States Code (as added by subsection (a)), shall be carried out not later than two years after the date of the enactment of this Act.

SA 2564. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, 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 lieu of the matter proposed, insert the following:

''SEC. . DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM

''(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1814(a)), is amended by adding at the end the following:

''178. Delta Region Transportation Development Program

''(a) IN GENERAL.—The Secretary shall carry out a program to—

''(1) support and encourage multistate transportation planning and corridor development;

''(2) provide for transportation project development;

''(3) facilitate transportation decisionmaking; and

''(4) support transportation construction.

''(b) ELIGIBLE RECIPIENTS.—A State transportation department and metropolitan planning organization may receive and administer funds provided under the program.

''(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under the program for multistate highway and transit planning, development, and construction projects.

''(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by section 134 and 135.

''(e) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under the program based on—

''(1) whether the project is located—

''(A) in an area that is part of the Delta Regional Authority; and

''(B) on the Federal-aid system;

''(2) endorsement of the project by the State department of transportation; and

''(3) evidence of the ability to complete the project.

''(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

''(1) encourage State and local officials to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

''(2) give priority to projects that emphasize multimodal planning, including planning for operational improvements that—

''(A) increase the mobility of people and goods;

''(B) improve the safety of the transportation system with respect to catastrophic—

''(i) natural disasters; or

''(ii) disasters caused by human activity; and

''(C) contribute to the economic vitality of the area in which the project is being carried out.

''(g) FEDERAL SHARE.—Amounts provided by the Delta Regional Authority to carry out a project under this section shall be applied to the non-Federal share required by section 120.

''(h) AVAILABILITY OF FUNDS.—Amounts made available to carry out this section shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter I of title 23, United States Code (as amended by section 1841(b)), is amended by adding at the end the following:

''178. Delta Region Transportation Development Program''.

On page 677, line 11, strike ''$2,500,000,000'' and insert ''$1,300,000,000''.

On page 677, line 13, strike ''$2,000,000,000'' and insert ''$1,200,000,000''.

On page 677, line 15, strike ''$500,000,000'' and insert ''$100,000,000''.

On page 678, after line 5, insert the following:

''(16) DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM.—For the Delta Region transportation development program, $400,000,000 for each of fiscal years 2004 through 2009.''

SA 2565. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, 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 lieu of the matter proposed, insert the following:

''SEC. . DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM

''(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1814(a)), is amended by adding at the end the following:

''178. Delta Region Transportation Development Program

''(a) IN GENERAL.—The Secretary shall carry out a program to—

''(1) support and encourage multistate transportation planning and corridor development;

''(2) provide for transportation project development;

''(3) facilitate transportation decisionmaking; and

''(4) support transportation construction.

''(b) ELIGIBLE RECIPIENTS.—A State transportation department and metropolitan planning organization may receive and administer funds provided under the program.

''(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under the program for multistate highway and transit planning, development, and construction projects.

''(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by section 134 and 135.

''(e) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under the program based on—

''(1) whether the project is located—

''(A) in an area that is part of the Delta Regional Authority; and

''(B) on the Federal-aid system;

''(2) endorsement of the project by the State department of transportation; and

''(3) evidence of the ability to complete the project.

''(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

''(1) encourage State and local officials to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

''(2) give priority to projects that emphasize multimodal planning, including planning for operational improvements that—

''(A) increase the mobility of people and goods;

''(B) improve the safety of the transportation system with respect to catastrophic—

''(i) natural disasters; or

''(ii) disasters caused by human activity; and

''(C) contribute to the economic vitality of the area in which the project is being carried out.

''(g) FEDERAL SHARE.—Amounts provided by the Delta Regional Authority to carry out a project under this section shall be applied to the non-Federal share required by section 120.

''(h) AVAILABILITY OF FUNDS.—Amounts made available to carry out this section shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter I of title 23, United States Code (as amended by section 1841 (b)), is amended by adding at the end the following:

''178. Delta Region Transportation Development Program.''.

On page 678, after line 5, insert the following:

''(16) DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM.—For the Delta Region transportation development program, $400,000,000 for each of fiscal years 2004 through 2009.''

SA 2566. Mr. GRASSLEY (for himself, and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2549 submitted by Mr. GRASSLEY (for himself and Mr. BAUCUS) and intended to be proposed to the bill S. 1072, 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 all after ''(g)'' and insert:

PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR RAIL PROJECTS.—Section 9503(c) (relating to transfers from Highway Trust Fund for certain repayments and credits) is amended by adding at the end the following new paragraph:

''(6) PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR CERTAIN RAIL PROJECTS.—With respect to rail projects beginning after the date of the enactment of this paragraph, no amount shall be available from the Highway Account (as defined in subsection (e)(5)(B)) for any rail project, except for any rail project involving publicly owned rail facilities or any rail project yielding a public benefit.''.

SA 2567. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. 1816. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State all counties of which are located, as of the date of enactment of this section, within the established 13-State Appalachian region, as determined by the Appalachian Regional Commission.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $270,000,000 for the period of fiscal year 2004.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.—Notwithstanding section 1101(13), the amount authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the infrastructure performance and maintenance program under section 139 of title 23, United States Code, shall be reduced by $270,000,000 for fiscal year 2004.

SA 2568. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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. _____. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

"§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State all counties of which are located, as of the date of enactment of this section, within the established 13-State Appalachian region, as determined by the Appalachian Regional Commission.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $270,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $45,000,000 shall be for fiscal year 2004;

''(B) $45,000,000 shall be for fiscal year 2005;

''(C) $45,000,000 shall be for fiscal year 2006;

''(D) $45,000,000 shall be for fiscal year 2007;

''(E) $45,000,000 shall be for fiscal year 2008; and

''(F) $45,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) EMERGENCY RELIEF.—Notwithstanding any other provisions of this Act, Section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$255,000,000''.

SA 2569. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. ____. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

"§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State all counties of which are located, as of the date of enactment of this section, within the established 13-State Appalachian region, as determined by the Appalachian Regional Commission.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $270,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $45,000,000 shall be for fiscal year 2004;

''(B) $45,000,000 shall be for fiscal year 2005;

''(C) $45,000,000 shall be for fiscal year 2006;

''(D) $45,000,000 shall be for fiscal year 2007;

''(E) $45,000,000 shall be for fiscal year 2008; and

''(F) $45,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) TRANSPORTATION RESEARCH.—Notwithstanding any other provision of this Act, each of the amounts authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) under section 2001, and each of the amounts limiting obligations under section 2002, shall be reduced by 10.1 percent.

SA 2570. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. ____. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

"§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State all counties of which are located, as of the date of enactment of this section, within the established 13-State Appalachian region, as determined by the Appalachian Regional Commission.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $270,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $45,000,000 shall be for fiscal year 2004;

''(B) $45,000,000 shall be for fiscal year 2005;

''(C) $45,000,000 shall be for fiscal year 2006;

''(D) $45,000,000 shall be for fiscal year 2007;

''(E) $45,000,000 shall be for fiscal year 2008; and

''(F) $45,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, Section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$277,000,000''.

(d) TRANSPORTATION RESEARCH.—Notwithstanding any other provision of this Act, each of the amounts authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) under section 2001, and each of the amounts limiting obligations under section 2002, shall be reduced by 5 percent.

SA 2571. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. ___. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $900,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $150,000,000 shall be for fiscal year 2004;

''(B) $150,000,000 shall be for fiscal year 2005;

''(C) $150,000,000 shall be for fiscal year 2006;

''(D) $150,000,000 shall be for fiscal year 2007;

''(E) $150,000,000 shall be for fiscal year 2008; and

''(F) $150,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, Section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$150,000,000''.

SA 2572. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. _____. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $780,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $130,000,000 shall be for fiscal year 2004;

''(B) $130,000,000 shall be for fiscal year 2005;

''(C) $130,000,000 shall be for fiscal year 2006;

''(D) $130,000,000 shall be for fiscal year 2007;

''(E) $130,000,000 shall be for fiscal year 2008; and

''(F) $130,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$170,000,000''.

SA 2573. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. _____. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $780,000,000 for the period of fiscal year 2004.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.—Notwithstanding

section 1101(13), the amount authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the infrastructure performance and maintenance program under section 139 of title 23, United States Code, is hereby reduced by $780,000,000 for fiscal year 2004.

SA 2574. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. _____. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

"§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $780,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $130,000,000 shall be for fiscal year 2004;

''(B) $130,000,000 shall be for fiscal year 2005;

''(C) $130,000,000 shall be for fiscal year 2006;

''(D) $130,000,000 shall be for fiscal year 2007;

''(E) $130,000,000 shall be for fiscal year 2008; and

''(F) $130,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.—Notwithstanding section 1101(13), the amount authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the infrastructure performance and maintenance program under section 139 of title 23, United States Code, is hereby reduced by $330,000,000 for fiscal year 2004.

(d) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$225,000,000''.

SA 2575. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert

SEC. . APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

"§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $780,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $130,000,000 shall be for fiscal year 2004;

''(B) $130,000,000 shall be for fiscal year 2005;

''(C) $130,000,000 shall be for fiscal year 2006;

''(D) $130,000,000 shall be for fiscal year 2007;

''(E) $130,000,000 shall be for fiscal year 2008; and

''(F) $130,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT.—Notwithstanding section 188(a) of title 23, United States Code, the amount authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out subchapter II of chapter I of that title shall be $110,000,000 for each of fiscal years 2004 through 2009.

(d) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, Section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$210,000,000''.

(e) TRANSPORTATION RESEARCH.—Notwithstanding any other provision of this Act, each of the amounts authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) under section 2001, and each of the amounts limiting obligations under section 2002, shall be reduced by 4.5 percent.

SA 2576. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert

SEC. . APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

"§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of

the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are in 'final design status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $780,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $130,000,000 shall be for fiscal year 2004;

''(B) $130,000,000 shall be for fiscal year 2005;

''(C) $130,000,000 shall be for fiscal year 2006;

''(D) $130,000,000 shall be for fiscal year 2007;

''(E) $130,000,000 shall be for fiscal year 2008; and

''(F) $130,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, Section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$190,000,000''.

(d) TRANSPORTATION RESEARCH.—Notwithstanding any other provision of this Act, each of the amounts authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) under section 2001, and each of the amounts limiting obligations under section 2002, shall be reduced by 4.5 percent.

SA 2577. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert

TITLE ____—SOLID WASTE DISPOSAL

SEC. ___01. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following new section:

''INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE

''SEC. 6005. (a) DEFINITIONS.—In this section:

''(1) AGENCY HEAD.—The term 'agency head' means—

''(A) the Secretary of Transportation; and

''(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

''(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

''(A) involves the procurement of cement or concrete; and

''(B) is carried out in whole or in part using Federal funds.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

''(A) ground granulated blast furnace slag;

''(B) coal combustion fly ash; and

''(C) 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.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

''(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Solid Waste Disposal Act is amended by adding after the item relating to section 6004 the following new item:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.''.

SEC. ___02. USE OF GRANULAR MINE TAILINGS.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) (as amended by section ___01(a)) is amended by adding at the end the following:

''SEC. 6006. USE OF GRANULAR MINE TAILINGS.

''(a) MINE TAILINGS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for—

''(A) cement or concrete projects; and

''(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

''(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

''(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

''(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

''(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

''(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

''(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section ___01(b)) is amended by adding at the end of the items relating to subtitle F the following:

''Sec. 6006. Use of granular mine tailings.''.

SA 2578. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. 1816. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $900,000,000 for the period of fiscal year 2004.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.—Notwithstanding section 1101(13), the amount authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the infrastructure performance and maintenance program under section 139 of title 23, United States Code, is hereby reduced by $900,000,000 for fiscal year 2004.

SA 2579. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. _____. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $900,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $300,000,000 shall be for fiscal year 2004;

''(B) $150,000,000 shall be for fiscal year 2005;

''(C) $150,000,000 shall be for fiscal year 2006;

''(D) $150,000,000 shall be for fiscal year 2007;

''(E) $150,000,000 shall be for fiscal year 2008; and

''(F) $150,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.—Notwithstanding section 1101(13), the amount authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the infrastructure performance and maintenance program under section 139 of title 23, United States Code, is hereby reduced by $300,000,000 for fiscal year 2004.

(d) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, Section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$180,000,000'' for fiscal years 2005 through 2009.

SA 2580. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. _____. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are not in 'location

status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $900,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $150,000,000 shall be for fiscal year 2004;

''(B) $150,000,000 shall be for fiscal year 2005;

''(C) $150,000,000 shall be for fiscal year 2006;

''(D) $150,000,000 shall be for fiscal year 2007;

''(E) $150,000,000 shall be for fiscal year 2008; and

''(F) $150,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT.—Notwithstanding section 188(a) of title 23, United States Code, the amount authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out subchapter II of chapter I of that title shall be $100,000,000 for each of fiscal years 2004 through 2009.

(d) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, Section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$200,000,000''.

(e) TRANSPORTATION RESEARCH.—Notwithstanding any other provision of this Act, each of the amounts authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) under section 2001, and each of the amounts limiting obligations under section 2002, shall be reduced by 4.5 percent.

SA 2581. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. . APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State based on the proportion that, under the most recent published report of the Appalachian Regional Commission under section 14501 of title 40—

''(1) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in the State; bears to

''(2) the cost of construction of highways and access roads that are not in 'location status' for the Appalachian development highway system program in all States.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $900,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $150,000,000 shall be for fiscal year 2004;

''(B) $150,000,000 shall be for fiscal year 2005;

''(C) $150,000,000 shall be for fiscal year 2006;

''(D) $150,000,000 shall be for fiscal year 2007;

''(E) $150,000,000 shall be for fiscal year 2008; and

''(F) $150,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) EMERGENCY RELIEF.—Notwithstanding any other provision of this Act, Section 125(c)(1) of title 23, United States Code (as amended by section 1822), is amended by striking ''$300,000,000'' and inserting ''$170,000,000''.

(d) TRANSPORTATION RESEARCH.—Notwithstanding any other provision of this Act, each of the amounts authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) under section 2001, and each of the amounts limiting obligations under section 2002, shall be reduced by 4.5 percent.

SA 2582. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

''(ii) $4,821,335 shall be available to the personal rapid transit system in Morgantown, West Virginia for improvements to its passenger operations under section 5307;''

SA 2583. Mr. BYRD submitted an amendment intended to be proposed by him to the bill S. 1072, 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 the amendment, insert:

SEC. . APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM COMPLETION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. Appalachian development highway system completion program

''(a) IN GENERAL.—The Secretary shall carry out a program, to be known as the 'Appalachian development highway system completion program' (referred to in this section as the 'program'), to allocate capital funding to expedite the completion of 'ready-to-go' segments of the Appalachian development highway system.

''(b) ELIGIBLE ACTIVITIES.—A State that receives an allocation of funds under this section shall use the funds to construct highways and access roads in accordance with chapter 145 of title 40.

''(c) ALLOCATION OF FUNDS.—The Secretary shall allocate funds under the program to each State all counties of which are located, as of the date of enactment of this section, within the established 13-State Appalachian region, as determined by the Appalachian Regional Commission.

''(d) FEDERAL SHARE.—The Federal share of the cost of carrying out any project or activity using funds allocated under the program shall be 80 percent.

''(e) FUNDING.—

''(1) IN GENERAL.—There shall be available to the Secretary to carry out this section, from the Highway Trust Fund (other than the Mass Transit Account), $270,000,000 for the period of fiscal years 2004 through 2009, of which—

''(A) $45,000,000 shall be for fiscal year 2004;

''(B) $45,000,000 shall be for fiscal year 2005;

''(C) $45,000,000 shall be for fiscal year 2006;

''(D) $45,000,000 shall be for fiscal year 2007;

''(E) $45,000,000 shall be for fiscal year 2008; and

''(F) $45,000,000 shall be for fiscal year 2009.

''(2) OBLIGATION, ELIGIBILITY, AND AVAILABILITY.—Funds authorized to be appropriated under section 1101(16) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 and made available under paragraph (1) to carry out this section—

''(A) shall be available for obligation by the Secretary in the same manner as if the funds were apportioned under this chapter;

''(B) shall not be considered in determining the eligibility of any State to receive funds under section 105; and

''(C) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Appalachian development highway system completion program.''.

(c) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT.—Notwithstanding section 188(a) of title 23, United States Code, the amount authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out subchapter II of chapter I of that title shall be $85,000,000 for each of fiscal years 2004 through 2009.

SA 2584. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2315 submitted by Mr. KYL and intended to be proposed to the bill S. 1072, 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 60, line 9, strike ''October 1, 2004'' and insert ''October 2, 2004''.

SA 2585. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2315 submitted by Mr. KYL and intended to be proposed to the bill S. 1072, 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 end, insert the following:

''(i) RESERVATION OF FUNDS.—In addition to any other funds made available for Indian reservation roads for each fiscal year, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $15,000,000 for each of fiscal years 2004 through 2009 to carry out planning, design, engineering for bridges located on Native American Lands''.

SA 2586. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2511 submitted by Mr. DASCHLE and intended to be proposed to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, 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 line 9 strike ''$15,000,000'' and insert ''$14,000,000''.

SA 2587. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2382 submitted by Mr. MCCAIN (for himself and Mr. HOLLINGS) and intended to be proposed to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, 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 lines 1 and 2.

SA 2588. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2418 submitted by Mr. CARPER and intended to be proposed to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, 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 lines 1 and 2.

SA 2589. Mr. CONRAD submitted an amendment intended to be proposed to amendment SA 2414 submitted by Mr. NICKLES and intended to be proposed to the bill S. 1072, 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 all after the first word and insert the following:

H—Additional Revenue Provisions

PART I—ADMINISTRATIVE PROVISIONS

SEC. 5671. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''March 31, 2004'' and inserting ''September 30, 2009''.

SEC. 5672. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''September 30, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

PART II—FINANCIAL INSTRUMENTS

SEC. 5673. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

''For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 5674. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERSHIPS AND S CORPORATIONS.

(a) IN GENERAL.—Section 168(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

''(A) IN GENERAL.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

''(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

''(i) the corporation's allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

''(ii) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation's allocable share of such interest expense.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5675. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

''(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

''(A) a debtor corporation transfers stock, or

''(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 5676. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

''(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

''(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

''(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

''(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.''.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

''(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and'', and

(B) by adding at the end the following new flush sentence:

''The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.''.

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.''

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

''(A) terminated the position for its fair market value immediately before the settlement, and

''(B) sold the property so delivered by the taxpayer at its fair market value.''.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Section 1092(d)(3) is repealed.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking ''; except that the term 'personal property' shall include stock''.

(d) REPEAL OF QUALIFIED COVERED CALL EXCEPTION.—Section 1092(c)(4) is amended by adding at the end the following new subparagraph:

''(I) TERMINATION.—This paragraph shall not apply to any position established on or after the date of the enactment of this subparagraph.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 5677. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking ''is issued by a corporation or a government or political subdivision thereof and''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

PART III—CORPORATIONS AND PARTNERSHIPS

SEC. 5678. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''.

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 5679. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 5680. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

'(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

(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. 5681. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 754 is repealed.

(b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking '', with respect to which the election provided in section 754 is in effect,'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking ''(as adjusted by section 732(d))'' both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking ''optional'' in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

(1) by striking ''with respect to which the election provided in section 754 is in effect'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

(3) by adding at the end the following new subsection:

''(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.'', and

(4) by striking ''**OPTIONAL**'' in the heading.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking ''section 734(b) (relating to the optional adjustment'' and inserting ''section 734(a) (relating to the adjustment'', and

(B) by striking ''section 743(b) (relating to the optional adjustment'' and inserting ''section 743(a) (relating to the adjustment''.

(3) Section 761(e)(2) is amended by striking ''optional''.

(4) Section 774(a) is amended by striking ''743(b)'' both places it appears and inserting ''743(a)''.

(5) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(6) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers and distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

PART IV—DEPRECIATION AND AMORTIZATION

SEC. 5682. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

SEC. 5683. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) initial clearing and grading land improvements with respect to gas utility property.''.

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.''.

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting ''or (E)(iv)'' after ''(E)(iii)'', and

(2) by adding at the end the following new item:

''(F) ..... 25''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 5684. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

''(i) the amount of start-up expenditures with respect to the active trade or business, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

''(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking ''AMORTIZE'' and inserting ''DEDUCT'' in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

''(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

''(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

''(A) the amount of organizational expenditures with respect to the taxpayer, or

''(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

''(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.''.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

''(i) the amount of organizational expenses with respect to the partnership, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

''(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

''(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ''AMORTIZATION'' and inserting ''DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SA 2590. Mr. ROCKEFELLER (for himself, Mr. BURNS, and Mr. DORGAN) submitted an amendment intended to be proposed by him to the bill S. 1072, 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 49 of the United States Code is amended by adding a new Section 11101, and renumbering all successive sections accordingly, as follows:

SEC. 11101. DUTY TO PROVIDE A RATE TO SHIPPERS.

Upon the request of a shipper, a rail carrier shall provide both a rate, in writing, for, and the transportation service requested by, the shipper between any two points on the system of that carrier where traffic originates, terminates, or may reasonably be interchanged.''

SA 2591. Mr. INHOFE proposed an amendment SA 2388 proposed by Mrs. HUTCHISON (for herself, Mr. KYL, Mr. LEVIN, Mr. GRAHAM of Florida, Mr. MCCAIN, Ms. STABENOW, and Mrs. FEINSTEIN) to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

At the end, add the following:

''SEC. . This section shall take effect one day after enactment of this Act.''

SA 2592. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1072, 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. ___. 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 readily available at a generally competitive price, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than nonethanol-blended gasoline, for use in vehicles used by the agency.

''(b) BIODIESEL.—

''(1) DEFINITION OF BIODIESEL.—In this subsection, the term 'biodiesel' has the meaning given the term in section 312(f) of the Energy Policy Act of 1992.

''(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 section, 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 section, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel, for use in vehicles used by the agency.

''(3) REQUIREMENT OF FEDERAL LAW.—This subsection does not constitute a requirement of Federal law for the purposes of section 312 of the Energy Policy Act of 1992.

''(c) EXEMPTION.—This section does not apply to fuel used in vehicles described in subparagraphs (A) through (H) of section 301(9) of the Energy Policy Act of 1992.''.

SA 2593. Mr. HOLLINGS (for himself and Mr. CARPER) submitted an amendment intended to be proposed by him to the bill S. 1072, 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 all after the first word and insert the following:

PART —AMTRAK AUTHORIZATIONS

SEC. 1. NATIONAL RAILROAD PASSENGER TRANSPORTATION SYSTEM DEFINED.

(a) IN GENERAL.—Section 24102 is amended—

(1) by striking paragraph (2);

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively; and

(3) by inserting after paragraph (4) as so redesignated the following:

''(5) 'national rail passenger transportation system' means—

''(A) the segment of the Northeast Corridor between Boston, Massachusetts and Washington, D.C.;

''(B) rail corridors that have been designated by the Secretary of Transportation as highspeed corridors, but only after they have been improved to permit operation of highspeed service;

''(C) long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004; and

''(D) short-distance corridors or routes operated by Amtrak.''.

(b) AMTRAK ROUTES WITH STATE FUNDING.—

(1) IN GENERAL.—Chapter 247 is amended by inserting after section 24701 the following:

''§ 24702. Transportation requested by States, authorities, and other persons

''(a) CONTRACTS FOR TRANSPORTATION.—Amtrak and a State, a regional or local authority, or another person may enter into a contract for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

''(b) DISCONTINUANCE.—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24701 the following:

''24702. Transportation requested by States, authorities, and other persons''.

(c) AMTRAK TO CONTINUE TO PROVIDE NON-HIGH-SPEED SERVICES.—Nothing in this subtitle is intended to preclude Amtrak from restoring, improving, or developing non-high-speed intercity passenger rail service.

SEC. 2. GENERAL AMTRAK AUTHORIZATIONS.

(a) REPEAL OF SELF-SUFFICIENCY REQUIREMENTS.

(1) TITLE 49 AMENDMENTS.—Chapter 241 is amended—

(A) by striking the last sentence of section 24101(d); and

(B) by striking the last sentence of section 24104(a).

(2) AMTRAK REFORM AND ACCOUNTABILITY ACT AMENDMENTS.—Title II of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 nt) is amended by striking sections 204 and 205.

(3) COMMON STOCK REDEMPTION DATE.—Section 415 of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24304 nt) is amended by striking subsection (b).

(b) LEASE ARRANGEMENTS.—Amtrak may obtain services from the Administrator of General Services, and the Administrator may provide services to Amtrak, under section 201(b) and 211(b) of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 481(b) and 491(b)) for each of fiscal years 2005 through 2009.

(c) FINANCIAL POWERS.—Section 415(d) of the Amtrak Reform and Accountability Act of 1997 by adding at the end the following:

''(3) This section does not affect the applicability of section 3729 of title 31, United States Code, to claims made against Amtrak.''.

(d) AMTRAK REPORTS.—Section 24315 is amended—

(1) by striking ''February 15'' in subsection (a) and inserting ''January 31st'';

(2) by striking subparagraph (B) of subsection (a)(1) and inserting the following:

''(B) the route profitability survey data, excluding interest and depreciation costs, or any other route cost allocation or profitability analysis that Amtrak develops;'';

(3) by striking subparagraph (D) of subsection (a)(1) and inserting the following:

''(D) the total revenue-to-total cost ratio;'';

(4) by striking subparagraphs (C), (F), and (G) of subsection (a) (1), and redesignating subparagraphs (D), (E), and (H) as subparagraphs (C), (D), and (E), respectively; and

(5) by striking ''February 15'' in subsection (b) and inserting ''January 31st''.

SEC. 3. REPAYMENT OF LOAN TO NATIONAL RAILROAD PASSENGER CORPORATION.

(a) IN GENERAL.—The Secretary of Transportation may not collect any payments of principal or interest for the direct loan made to the National Railroad Passenger Corporation under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). There are authorized to be appropriated to the Secretary for fiscal year 2005 $100,000,000 for the purpose of repaying that loan to the Secretary of the Treasury. The Secretary of Transportation shall waive any conditions imposed under the loan.

(b) CERTAIN CONDITIONS WAIVED.—Section 151 of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, is repealed.

(c) FEDERAL RAILROAD ADMINISTRATION.—

(1) IN GENERAL.—Section 11123 is amended—

(A) by striking ''failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation,'' in subsection (a);

(B) by inserting ''or'' after the semicolon in subsection (a)(3);

(C) by striking ''permits, or'' in subsection (a)(4) and inserting ''permits.'';

(D) by striking paragraph (5) of subsection (a);

(E) by striking ''(A) Except as provided in subparagraph (B), when'' in subsection (b)(3) and inserting ''When'';

(F) by striking subparagraph (B) of subsection (b)(3);

(G) by striking paragraph (4) of subsection (c); and

(H) by striking subsections (e) and (f).

(2) Section 24301(c) is amended by striking ''11123,''.

SEC. 4. RESTRUCTURING OF LONG–TERM DEBT AND CAPITAL LEASES.

(a) IN GENERAL.—The Secretary of the Treasury shall work with the Secretary of Transportation and Amtrak to restructure Amtrak's indebtedness as of the date of enactment of this Act.

(b) NEW DEBT PROHIBITION.—Except as approved by the Secretary of Transportation, Amtrak may not enter into any obligation secured by assets of the Corporation after the date of enactment of this Act. This section does not prohibit unsecured lines of credit used by Amtrak or any subsidiary for working capital purposes.

(c) DEBT REDEMPTION.—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall enter into negotiations with the holders of Amtrak debt, including leases, that is outstanding on the date of enactment of this Act for the purpose of redeeming or restructuring that debt. The Secretary, in consultation with the Secretary of the Treasury, shall secure agreements for repayment on such terms as the Secretary deems favorable to the interests of the Government. Payments for such redemption may be made after October 1, 2005, in either a single payment or a series of payments, but in no case shall the repayment period extend beyond September 30, 2010.

(d) CRITERIA.—In redeeming or restructuring Amtrak's indebtedness, the Secretaries and Amtrak—

(1) shall ensure that the restructuring imposes the least practicable burden on taxpayers; and

(2) take into consideration repayment costs, the term of any loan or loans, and market conditions.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Secretary such sums as may be necessary for fiscal years 2005 through 2010 to restructure or redeem Amtrak's secured debt.

(f) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—Unless the Secretary of Transportation and the Secretary of the Treasury redeem the debt in its entirety, there are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for retirement of principal on loans for capital equipment, or capital leases, the following amounts:

(A) For fiscal year 2005, $109,500,000.
(B) For fiscal year 2006, $114,700,000.
(C) For fiscal year 2007, $202,900,000.
(D) For fiscal year 2008, $164,300,000.
(E) For fiscal year 2009, $155,800,000.
(F) For fiscal year 2010, $203,500,000.

(2) INTEREST ON DEBT.—Unless the Secretary of Transportation and the Secretary of the Treasury restructure or redeem the debt, there are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for the payment of interest on loans for capital equipment, or capital leases, the following amounts:

(A) For fiscal year 2005, $151,300,000.
(B) For fiscal year 2006, $146,300,000.
(C) For fiscal year 2007, $137,500,000.
(D) For fiscal year 2008, $125,300,000.
(E) For fiscal year 2009, $117,100,000.
(F) For fiscal year 2010, $107,800,000.

(3) REDUCTIONS IN AUTHORIZATION LEVELS.—Whenever action taken by the Secretary of the Treasury under subsection (c) results in reductions in amounts of principle and interest that, Amtrak must service on existing debt, Amtrak shall submit to the Senate Committee on Commerce, Science and Transportation, the House of Representatives Committee on Transportation and Infrastructure, the Senate Committee on Appropriations, and House of Representatives Committee on Appropriations revised requests for amounts authorized by paragraphs (1) and (2) that reflect the such reductions.

SEC. 5. AUTHORIZATIONS FOR ENVIRONMENTAL COMPLIANCE AND STATION IMPROVEMENTS.

(a) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak in order to comply with environmental regulations the following amounts:

(A) For fiscal year 2005, $18,800,000.
(B) For fiscal year 2006, $21,700,000.
(C) For fiscal year 2007, $22,300,000.
(D) For fiscal year 2005, $15,100,000.
(E) For fiscal year 2009, $15,900,000.
(F) For fiscal year 2010, $16,000,000.

(b) CAPITAL IMPROVEMENTS TO STATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for capital improvements to stations, including an initial assessment of the full set of accessibility needs across the national rail passenger transportation system and improved accessibility for the elderly and people with disabilities and in Amtrak facilities and stations, the following amounts:

(A) For fiscal year 2005, $17,100,000.
(B) For fiscal year 2006, $19,800,000.
(C) For fiscal year 2007, $19,800,000.
(D) For fiscal year 2008, $19,000,000.
(E) For fiscal year 2009, $19,000,000.
(F) For fiscal year 2010, $19,000,000.

(2) STUDY OF COMPLIANCE REQUIREMENTS AT EXISTING INTERCITY RAIL STATIONS.—Amtrak shall evaluate the improvements necessary to make all existing stations it serves readily accessible to and usable by individuals with disabilities, as required by section 242(e)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12162(e)(2)). The evaluation shall include the estimated cost of the improvements necessary, the identification of the responsible person (as defined in section 241(5) of that Act (42 U.S.C. 12161(5))), and the earliest practicable date when such improvements can be made. Amtrak shall submit the survey to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the National Council on Disability by September 30, 2005, along with recommendations for funding the necessary improvements.

SEC. 6. TUNNEL LIFE SAFETY.

(a) LIFE SAFETY NEEDS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for fiscal year 2005:

(1) $677,000,000 for the 6 New York tunnels built in 1910 to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers.

(2) $57,000,000 for the Baltimore & Potomac tunnel built in 1872 to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades.

(3) $40,000,000 for the Washington, D.C., Union Station tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings to improve ventilation, communication, lighting, and passenger egress upgrades.

(b) INFRASTRUCTURE UPGRADES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak in consultation with the State of Maryland $3,000,000 for fiscal year 2005 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all life safety portions of the tunnel projects described in subsection (a)—

(1) consider the extent to which rail carriers other than Amtrak use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(3) obtain financial contributions or commitments from such other rail carriers if feasible.

(e) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to this section shall remain available until expended.

SEC. 7. AUTHORIZATION FOR CAPITAL AND OPERATING EXPENSES.

(a) OPERATING EXPENSES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for operating costs the following amounts:

(1) For fiscal year 2005, $581,400,000.
(2) For fiscal year 2006, $566,700,000.
(3) For fiscal year 2007, $557,700,000.
(4) For fiscal year 2008, $528,500,000.
(5) For fiscal year 2009, $522,000,000.
(6) For fiscal year 2010, $522,000,000.

(b) CAPITAL BACKLOG AND UPGRADES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for capital expenses, the following amounts:

(1) For fiscal year 2005, $741,500,000.
(2) For fiscal year 2006, $835,200,000.
(3) For fiscal year 2007, $760,800,000.
(4) For fiscal year 2008, $733,600,000.
(5) For fiscal year 2009, $774,300,000.
(6) For fiscal year 2010, $874,300,000.

(c) REPLACEMENT EQUIPMENT.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for the purchase of replacement passenger rail equipment the following amounts:

(1) For fiscal year 2006, $250,000,000.
(2) For fiscal year 2007, $250,000,000.
(3) For fiscal year 2008, $350,000,000.
(4) For fiscal year 2009, $350,000,000.
(5) For fiscal year 2010, $350,000,000.

SEC. 8. GRANTS NOT CONSIDERED TO REPLACE FEDERAL OPERATING OR CAPITAL SUPPORT.

Grants or assistance provided directly to a State or group of States by the Secretary under this title for rail infrastructure investments shall not be considered to reduce or replace the authorizations or the need for annual Federal appropriations for the National Railroad Passenger Corporation.

SEC. 9. ESTABLISHMENT OF GRANT PROCESS.

(a) GRANT REQUESTS.—Amtrak shall submit grant requests to the Secretary of Transportation for funds authorized to be appropriated to the Secretary for the use of Amtrak under sections _____ 6, _____ 7, and _____ 8.

(b) PROCEDURES FOR GRANT REQUESTS.—The Secretary shall establish substantive and procedural requirements, including schedules, for grant requests under this section not later than 30 days after the date of enactment of this Act and shall transmit copies to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) REVIEW AND APPROVAL.—

(1) 30-DAY PROCESS.—The Secretary shall complete the review of a grant request and approve or disapprove the request within 30 days after the date on which Amtrak submits the grant request.

(2) INCOMPLETE OR DEFICIENT REQUESTS.—If the Secretary disapproves the request or determines that the request is incomplete or deficient, the Secretary shall immediately notify Amtrak of the reason for disapproval or the incomplete items or deficiencies. Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary's review.

(3) REVISED REQUESTS.—Within 15 days after receiving a modified request from Amtrak, the Secretary shall either approve the modified request, or, if the Secretary finds that the request, is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the remaining deficiencies and recommend a process for resolving the outstanding portions of the request.

SEC. 10. STATE-SUPPORTED ROUTES.

The Board of Directors of Amtrak, in consultation with the Secretary of Transportation and the chief executive officer of each State and the District of Columbia, shall develop a formula for funding the operating costs of trains operating on routes not in excess of 750 miles in length that—

(1) is equitable and fair; and

(2) ensures, within 5 years after the date of enactment of this Act, equal treatment of all States (and the District of Columbia) and groups of States (including the District of Columbia).

SEC. 11. REESTABLISHMENT OF NORTHEAST CORRIDOR SAFETY COMMITTEE.

(a) RE-ESTABLISHMENT OF NORTHEAST CORRIDOR SAFETY COMMITTEE.—The Secretary of Transportation shall reestablish the Northeast Corridor Safety Committee authorized by section 24905(b) of title 49, United States Code.

(b) TERMINATION DATE.—Section 24905(b)(4) is amended by striking ''January 1, 1999,'' and inserting ''January 1, 2009,''.

SEC. 12. AMTRAK BOARD OF DIRECTORS.

Section 24302 is amended to read as follows:

''24302. Board of directors

''(a) COMPOSITION AND TERMS.—

''(1) The board of directors of Amtrak is composed of the following 9 directors, each of whom must be a citizen of the United States:

''(A) The President of Amtrak.

''(B) The Secretary of Transportation.

''(C) 7 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with experience and qualifications in or directly related to rail transportation, including representatives of freight and passenger rail transportation, travel, hospitality, cruise line, and passenger air, transportation businesses, consumers of passenger rail transportation, and State government.

''(2) In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall consult with the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, and the Minority Leader of the Senate and should ensure adequate and balanced representation of the major geographic regions of the United States.

''(3) Each member shall be appointed for a term of 5 years and until the individual's successor is appointed and qualified. Not more than 4 individuals appointed under paragraph (1)(C) may be members of the same political party.

''(4) The board shall elect a chairman and a vice chairman from among its membership. The vice chairman shall serve as chairman in the absence of the chairman.

''(5) The Secretary may be represented at board meetings by the Secretary's designee.

''(b) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to $300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

''(c) Vacancies.—A vacancy on the board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

''(d) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.''.

SEC. 13. ESTABLISHMENT OF FINANCIAL ACCOUNTING SYSTEM FOR AMTRAK OPERATIONS BY INDEPENDENT AUDITOR.

(a) IN GENERAL.—The Inspector General of the Department of Transportation shall employ an independent financial consultant with experience in railroad accounting—

(1) to assess Amtrak's financial accounting and reporting system and practices;

(2) to design and assist Amtrak in implementing a modern financial accounting and reporting system, on the basis of the assessment, that will produce accurate and timely financial information in sufficient detail—

(A) to enable Amtrak to assign revenues and expenses appropriately to each of its lines of business and to each major activity within each line of business activity, including train operations, equipment maintenance, ticketing, and reservations;

(B) to aggregate expenses and revenues related to infrastructure and distinguish them from expenses and revenues related to rail operations; and

(C) to provide ticketing and reservation information on a real-time basis.

(b) VERIFICATION OF SYSTEM; REPORT.—The Inspector General of the Department of Transportation shall review the accounting system designed and implemented under subsection (a) to ensure that it accomplishes the purposes for which it is intended. The Inspector General shall report his findings and conclusions, together with any recommendations, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $2,500,000 for fiscal year 2005 to carry out subsection (a), such sums to remain available until expended.

SEC. 14. DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.

(a) DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.—The Amtrak board of directors shall submit an annual budget for Amtrak, and a 5-year financial plan for the fiscal year to which that budget relates and the subsequent 4 years, prepared in accordance with this section, to the Secretary of Transportation and the Inspector General of the Department of Transportation no later than—

(1) the first day of each fiscal year beginning after the date of enactment of this Act; or

(2) the date that is 60 days after the date of enactment of an appropriation Act for the fiscal year, if later.

(b) CONTENTS OF 5-YEAR FINANCIAL PLAN.—The 5-year financial plan for Amtrak shall include, at a minimum—

(1) all projected revenues and expenditures for Amtrak, including governmental funding sources;

(2) projected ridership levels for all Amtrak passenger operations;

(3) revenue and expenditure forecasts for non-passenger operations;

(4) capital funding requirements and expenditures necessary to maintain passenger service which will accommodate predicted ridership levels and predicted sources of capital funding;

(5) operational funding needs, if any, to maintain current and projected levels of passenger service, including state-supported routes and predicted funding sources;

(6) projected capital and operating requirements, ridership, and revenue for any new passenger service operations or service expansions;

(7) an assessment of the continuing financial stability of Amtrak, as indicated by factors such as: the ability of the federal government to adequately meet capital and operating requirements, Amtrak's access to long-term and short-term capital markets, Amtrak's ability to efficiently manage its workforce, and Amtrak's ability to effectively provide passenger train service;

(8) lump sum expenditures of $10,000,000 or more and sources of funding;

(9) estimates of long-term and short-term debt and associated principle and interest payments (both current and anticipated);

(10) annual cash flow forecasts; and

(11) a statement describing methods of estimation and significant assumptions.

(c) STANDARDS TO PROMOTE FINANCIAL STABILITY.—In meeting the requirements of subsection (b) with respect to a 5-year financial plan, Amtrak shall—

(1) apply sound budgetary practices, including reducing costs and other expenditures, improving productivity, increasing revenues, or combinations of such practices; and

(2) use the categories specified in the financial accounting and reporting system developed under section 4652 when preparing its 5-year financial plan.

(d) ASSESSMENT BY DOT INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Transportation shall assess the 5-year financial plans prepared by Amtrak under this section to determine whether they meet the requirements of subsection (b), and may suggest revisions to any components thereof that do not meet those requirements.

(2) ASSESSMENT TO BE FURNISHED TO THE CONGRESS.—The Inspector General shall furnish to the House of Representatives Committee on Appropriations, the Senate Committee on Appropriations, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation—

(A) an assessment of the annual budget within 90 days after receiving it from Amtrak; and

(B) an assessment of the remaining 4 years of the 5-year financial plan within 180 days after receiving it from Amtrak.

SEC. 15. INDEPENDENT AUDITOR TO ESTABLISH METHODOLOGIES FOR AMTRAK ROUTE AND SERVICE PLANNING DECISIONS.

(a) REVIEW.—The Secretary of Transportation shall, in consultation with the Federal Railroad Administration, execute a contract to obtain the services of an independent auditor or consultant to research and define Amtrak's past and current methodologies for determining intercity passenger rail routes and services.

(b) RECOMMENDATIONS.—The independent auditor or consultant shall recommend objective methodologies for determining such routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes.

(e) SUBMITTAL TO CONGRESS.—The Secretary shall submit recommendations received under subsection (b) to Amtrak, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be made available to the Secretary of Transportation, out of any amounts authorized by this title to be appropriated for the benefit of Amtrak and not otherwise obligated or expended, such sums as may be necessary to carry out this section.

SEC. 16. METRICS AND STANDARDS.

The Administrator of the Federal Railroad Administration shall, in consultation with Amtrak and host railroads, develop new or improve existing metrics and minimum standards for measuring the service quality of intercity train operations, including on-time performance, onboard services, stations, facilities, equipment, and other services.

SEC. 17. ON-TIME PERFORMANCE.

Section 24308 is amended by adding at the end the following:

''(f) ON-TIME PERFORMANCE AND OTHER STANDARDS.—If the on-time performance of any intercity passenger train averages less than 80 percent for any consecutive 6-month period, or the service quality of intercity train operations for which minimum standards are established under section _____17 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 Act fails to meet those standards, Amtrak may petition the Surface Transportation Board to investigate whether, and to what extent, delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over the tracks of which the intercity passenger train operates, or by a regional authority providing commuter service, if any. In carrying out such an investigation, the Surface Transportation Board shall obtain information from all parties involved and make recommendations regarding reasonable measures to improve the service, quality, and on-time performance of the train.''.

SA 2594. Mr. HOLLINGS (for himself and Mr. CARPER) submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

PART —AMTRAK AUTHORIZATIONS

SEC. 1. NATIONAL RAILROAD PASSENGER TRANSPORTATION SYSTEM DEFINED.

(a) IN GENERAL.—Section 24102 is amended—

(1) by striking paragraph (2);

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively; and

(3) by inserting after paragraph (4) as so redesignated the following:

''(5) 'national rail passenger transportation system' means—

''(A) the segment of the Northeast Corridor between Boston, Massachusetts and Washington, D.C.;

''(B) rail corridors that have been designated by the Secretary of Transportation as high-speed corridors, but only after they have been improved to permit operation of highspeed service;

''(C) long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the elate of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004; and

''(D) short-distance corridors or routes operated by Amtrak.''.

(b) AMTRAK ROUTES WITH STATE FUNDING.—

(1) IN GENERAL.—Chapter 247 is amended by inserting after section 24701 the following:

''§ 24702. Transportation requested by States, authorities, and other persons

''(a) CONTRACTS FOR TRANSPORTATION.—Amtrak and a State, a regional or local authority, or another person may enter into a

contract for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

''(b) DISCONTINUANCE.—-Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24701 the following:

''24702. Transportation requested by States, authorities, and other persons''.

(c) AMTRAK TO CONTINUE TO PROVIDE NON-HIGHSPEED SERVICES.—Nothing in this subtitle is intended to preclude Amtrak from restoring, improving, or developing non-high-speed intercity passenger rail service.

SEC. 2. GENERAL AMTRAK AUTHORIZATIONS.

(a) REPEAL OF SELF-SUFFICIENT REQUIREMENTS.—

(1) TITLE 49 AMENDMENTS.—Chapter 241 is amended—

(A) by striking the last sentence of section 24101(4); and

(B) by striking the last sentence of section 24104(a).

(2) AMTRAK REFORM AND ACCOUNTABILITY ACT AMENDMENTS.—Title II of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 nt) is amended by striking sections 204 and 205.

(3) COMMON STOCK REDEMPTION DATE.—-Section 415 of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24304 nt) is amended by striking subsection (b).

(b) LEASE ARRANGEMENTS.—Amtrak may obtain services from the Administrator of General Services, and the Administrator may provide services to Amtrak, under section 201(b) and 211(b) of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 481(b) and 491(b)) for each of fiscal years 2005 through 2009.

(c) FINANCIASL POWERS.—Section 415(4) of the Amtrak Reform and Accountability Act of 1997 by adding at the end the following:

''(3) This section does not affect the applicability of section 3729 of title 31, United States Code, to claims made against Amtrak.''.

(d) AMTRAK REPORTS.—Section 24315 is amended—

(1) by striking ''February 15'' in subsection (a) and inserting ''January 31st'';

(2) by striking subparagraph (B) of subsection (a)(1) and inserting the following:

''(B) the route profitability survey data, excluding interest and depreciation costs, or any other route cost allocation or profitability analysis that Amtrak develops;'';

(3) by striking subparagraph (D) of subsection (a)(1) and inserting the following:

''(D) the total revenue-to-total cost ratio;'';

(4) by striking subparagraphs (C), (F), and (G) of subsection (a)(1), and redesignating subparagraphs (D), (E), and (H) as subparagraphs (C), (D), and (E), respectively; and

(5) by striking ''February 15'' in subsection (b) and inserting ''January 31st''.

SEC. 3. REPAYMENT OF LOAN TO NATIONAL RAILROAD PASSENGER CORPORATION.

(a) IN GENERAL.—The Secretary of Transportation may not collect any payments of principal or interest for the direct loan made to the National Railroad Passenger Corporation under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). There are authorized to be appropriated to the Secretary for fiscal year 2005 $100,000,000 for the purpose of repaying that loan to the Secretary of the Treasury. The Secretary of Transportation shall waive any conditions imposed under the loan.

(b) CERTAIN CONDITIONS WAIVED.—Section 151 of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, is repealed.

(c) FEDERAL RAILROAD ADMINISTRATION.—

(1) IN GENERAL.—Section 11123 is amended—

(A) by striking ''failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation,'' in subsection (a);

(B) by inserting ''or'' after the semicolon in subsection (a)(3);

(C) by striking ''permits; or'' in subsection (a)(4) and inserting ''permits.'';

(D) by striking paragraph (5) of subsection (a);

(E) by striking ''(A) Except as provided in subparagraph (B), when'' in sub-section (b)(3) and inserting ''When'';

(F) by striking subparagraph (B) of subsection (b)(3);

(G) by striking paragraph (4) of subsection (c); and

(H) by striking subsections (e) and (f).

(2) Section 24301(c) is amended by striking ''11123,''.

SEC. 4. RESTRUCTURING OF LONG-TERM DEBT AND CAPITAL LEASES.

(a) IN GENERAL.—-The Secretary of the Treasury shall work with the Secretary of Transportation and Amtrak to restructure Amtrak's indebtedness as of the date of enactment of this Act.

(b) NEW DEBT PROHIBITION.—Except as approved by the Secretary of Transportation, Amtrak may not enter into any obligation secured by assets of the Corporation after the date of enactment of this Act. This section does not prohibit unsecured lines of credit used by Amtrak or any subsidiary for working capital purposes.

(c) DEBT REDEMPTION.—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall enter into negotiations with the holders of Amtrak debt, including leases, that is outstanding on the (date of enactment of this Act for the purpose of redeeming or restructuring that debt. The Secretary, in consultation with the Secretary of the Treasury, shall secure agreements for repayment on such terms as the Secretary deems favorable to the interests of the Government. Payments for such redemption may be made after October 1, 2005, in either a single payment or a series of payments, but in no case shall the repayment period extend beyond September 30, 2010.

(d) CRITERIA.—In redeeming or restructuring Amtrak's indebtedness, the Secretaries and Amtrak—

(1) shall ensure that the restructuring imposes the least practicable burden on taxpayers; and

(2) take into consideration repayment costs, the term of any loan or loans, and market conditions.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Secretary such sums as may be necessary for fiscal years 2005 through 2010 to restructure or redeem Amtrak's secured debt.

(f) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—Unless the Secretary of Transportation and the Secretary of the Treasury redeem the debt in its entirety, there are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for retirement of principal on loans for capital equipment, or capital leases, the following amounts:

(A) For fiscal year 2005, $109,500,000.

(B) For fiscal year 2006, $114,700,000.

(C) For fiscal year 2007, $202,900,000,

(D) For fiscal year 2008, $164,300,000.

(E) For fiscal year 2009, $155,800,000.

(F) For fiscal year 2010, $203,500,000.

(2) INTEREST ON DEBT.—Unless the Secretary of Transportation and the Secretary of the Treasury restructure or redeem the debt, there are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for the payment of interest on loans for capital equipment, or capital leases, the following amounts:

(A) For fiscal year 2005, $151,300,000.

(B) For fiscal year 2006, $146,300,000.

(C) For fiscal year 2007, $137,500,000.

(D) For fiscal year 2008, $125,300,000.

(E) For fiscal year 2009, $117,100,000.

(F) For fiscal year 2010, $107,800,000.

(3) REDUCTIONS IN AUTHORIZATION LEVELS.—Whenever action taken by the Secretary of the Treasury under subsection (c) results in reductions in amounts of principal and interest that Amtrak must service on existing debt, Amtrak shall submit to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, the Senate Committee on Appropriations, and House of Representatives Committee on Appropriations revised requests for amounts authorized by paragraphs (1) and (2) that reflect the such reductions.

SEC. 5. AUTHORIZATIONS FOR ENVIRONMENTAL COMPLIANCE AND STATION IMPROVEMENTS.

(a) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak in order to comply with environmental regulations the following amounts:

(A) For fiscal year 2005, $18,800,000.

(B) For fiscal year 2006, $21,700,000.

(C) For fiscal year 2007, $22,300,000.

(D) For fiscal year 2008, $15,100,000.

(E) For fiscal year 2009, $15,900,000.

(F) h or fiscal year 2010, $16,000,000.

(b) CAPITAL IMPROVEMENTS TO STATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for capital improvements to stations, including an initial assessment of the full set of accessibility needs across the national rail passenger transportation system and improved accessibility for the elderly and people with disabilities and in Amtrak facilities and stations, the following amounts:

(A) For fiscal year 2005, $17,100,000.

(B) For fiscal year 2006, $19,800,000.

(C) For fiscal year 2007, $19,800,000.

(D) For fiscal year 2008, $19,000,000.

(E) For fiscal year 2009, $19,000,000.

(F) For fiscal year 2010, $19,000,000.

(2) STUDY OF COMPLIANCE REQUIREMENTS AT EXISTING INTERCITY RAIL STATIONS.—Amtrak shall evaluate the improvements necessary to make all existing stations it serves readily accessible to and usable by individuals with disabilities, as required by section 242(e)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12162(e)(2)). The evaluation shall include the estimated cost of the improvements necessary, the identification of the responsible person (as defined in section 241(5) of that Act (42 U.S.C. 12161(5))), and the earliest practicable date when such improvements can be made. Amtrak shall submit the survey to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the, National Council on Disability by September 30, 2005, along with recommendations for funding the necessary improvements.

SEC. 6. TUNNEL LIFE SAFETY.

(a) LIFE SAFETY NEEDS.—There are authorized to be appropriated to the Secretary of

Transportation for the use of Amtrak for fiscal year 2005:

(1) $677,000,000 for the 6 New York tunnels built in 1910 to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers.

(2) $57,000,000 for the Baltimore & Potomac tunnel built in 1872 to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades.

(3) $40,000,000 for the Washington, DC, Union Station tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings to improve ventilation, communication, lighting, and passenger egress upgrades.

(b) INFRASTRUCTURE UPGRADES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak in consultation with the State of Maryland $3,000,000 for fiscal year 2005 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all life safety portions of the tunnel projects described in subsection (a)—

(1) consider the extent to which rail carriers other than Amtrak use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects, and

(3) obtain financial contributions or commitments from such other rail carriers if feasible.

(e) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to this section shall remain available until expended.

SEC. 7. AUTHORIZATION FOR CAPITAL AND OPERATING EXPENSES.

(a) OPERATING EXPENSES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for operating costs the following amounts:

(1) For fiscal year 2005, $581,400,000.
(2) For fiscal year 2006, $566,700,000.
(3) For fiscal year 2007, $557,700,000.
(4) For fiscal year 2008, $528,500,000.
(5) For fiscal year 2009, $522,000,000.
(6) For fiscal year 2010, $522,000,000.

(b) CAPITAL BACKLOG AND UPGRADES.—There are authorized to be appropriated to the Secretary, of Transportation for the use of Amtrak for capital expenses, the following amounts:

(1) For fiscal year 2005, $741,500,000.
(2) For fiscal year 2006, $835,200,000.
(3) For fiscal year 2007, $760,800,000.
(4) For fiscal year 2008, $733,600,000.
(5) For fiscal year 2009, $774,300,000.
(6) For fiscal year 2010, $874,300,000.

(c) REPLACEMENT EQUIPMENT.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for the purchase of replacement passenger rail equipment the following amounts:

(1) For fiscal year 2006, $250,000,000.
(2) For fiscal year 2007, $250,000,000.
(3) For fiscal year 2008, $350,000,000.
(4) For fiscal year 2009, $350,000,000.
(5) For fiscal year 2010, $350,000,000.

SEC. 8. GRANTS NOT CONSIDERED TO REPLACE FEDERAL OPERATING OR CAPITAL SUPPORT.

Grants or assistance provided directly to a State or group of States by the Secretary under this title for rail infrastructure investments shall not be considered to reduce or replace the authorizations or the need for annual Federal appropriations for the National Railroad Passenger Corporation.

SEC. 9. ESTABLISHMENT OF GRANT PROCESS.

(a) GRANT REQUESTS.—Amtrak shall submit grant requests to the Secretary of Transportation for funds authorized to be appropriated to the Secretary for the use of Amtrak under sections _____6, _____7, and _____8.

(b) PROCEDURES FOR GRANT REQUEST.—The Secretary shall establish substantive and procedural requirements, including schedules, for grant requests under this section not late than 30 days after the date of enactment of this Act and shall transmit copies to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) REVIEW AND APPROVAL.—

(1) 30–DAY PROCESS.—The Secretary shall complete the review of a grant request and approve or disapprove the request within 30 days after the date on which Amtrak submits the grant request.

(2) INCOMPLETE OR DEFICIENT REQUESTS.—If the Secretary disapproves the request or determines that the request is incomplete or deficient, the Secretary shall immediately notify Amtrak of the reason for disapproval or the incomplete items or deficiencies. Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary's review.

(3) REVISED REQUESTS.—Within 15 days after receiving a modified request from Amtrak, the Secretary shall either approve the modified request, or, if the Secretary finds that the request is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the remaining deficiencies and recommend a process for resolving the outstanding portions of the request.

SEC. 10. STATE-SUPPORTED ROUTES.

The Board of Directors of Amtrak, in consultation with the Secretary of Transportation and the chief executive officer of each State and the District of Columbia, shall develop a formula for funding the operating costs of trains operating on routes not in excess of 750 miles in length that—

(1) is equitable and fair; and

(2) ensures, within 5 years after the date of enactment of this Act, equal treatment of all States (and the District of Columbia) and groups of States (including the District of Columbia).

SEC. 11. RE-ESTABLISHMENT OF NORTHEAST CORRIDOR SAFETY COMMITTEE.

(a) RE-ESTABLISHMENT OF NORTHEAST CORRIDOR SAFETY COMMITTEE.—The Secretary of Transportation shall re-establish the Northeast Corridor Safety Committee authorized by section 24905(b) of title 49, United States Code.

(b) TERMINATION DATE.—Section 24905(b)(4) is amended by striking ''January 1, 1999,'' and inserting ''January 1, 2009,''.

SEC. 12. AMTRAK BOARD OF DIRECTORS.

Section 24302 is amended to read as follows:

''§ 24302. Board of directors

''(a) COMPOSITION AND TERMS.—

''(1) The board of directors of Amtrak is composed of the following 9 directors, each of whom must be a citizen of the United States:

''(A) The President of Amtrak.

''(B) The Secretary of Transportation.

''(C) 7 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with experience and qualifications in or directly related to rail transportation, including representatives of freight and passenger rail transportation, travel, hospitality, cruise line, and passenger air transportation businesses, consumers of passenger rail transportation, and State government.

''(2) In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall consult with the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, and the Minority Leader of the Senate and should ensure adequate and balanced representation of the major geographic regions of the United States.

''(3) Each member shall be appointed for a term of 5 years and until the individual's successor is appointed and qualified. Not more than 4 individuals appointed under paragraph (1)(C) may be members of the same political party.

''(4) The board shall elect a chairman and a vice chairman from among its membership. The vice chairman shall serve as chairman in the absence of the chairman.

''(5) The Secretary may be represented at board meetings by the Secretary's designee.

''(b) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to $300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

''(e) VACANCIES.—A vacancy on the board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the terror for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

''(d) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.''.

SEC. 13. ESTABLISHMENT OF FINANCIAL ACCOUNTING SYSTEM FOR AMTRAK OPERATIONS BY INDEPENDENT AUDITOR.

(a) IN GENERAL.—The Inspector General of the Department of Transportation shall employ an independent financial consultant with experience in railroad accounting—

(1) to assess Amtrak's financial accounting and reporting system and practices;

(2) to design and assist Amtrak in implementing a modern financial accounting and reporting system, on the basis of the assessment, that will produce accurate and timely financial information in sufficient detail—

(A) to enable Amtrak to assign revenues and expenses appropriately to each of its lines of business and to each major activity within each line of business activity, including train operations, equipment maintenance, ticketing, and reservations;

(B) to aggregate expenses and revenues related to infrastructure and distinguish them from expenses and revenues related to rail operations; and

(C) to provide ticketing and reservation information on a real-time basis.

(b) VERIFICATION OF SYSTEM; REPORT.—The Inspector General of the Department of Transportation shall review the accounting system designed and implemented under subsection (a) to ensure that it accomplishes the purposes for which it is intended. The Inspector General shall report his findings and conclusions, together with any recommendations, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $2,500,000 for

fiscal year 2005 to carry out subsection (a), such sums to remain available until expended.

SEC. 14. DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.

(a) DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.—The Amtrak board of directors shall submit an annual budget for Amtrak, and a 5-year financial plan for the fiscal year to which that budget relates and the subsequent 4 years, prepared in accordance with this section, to the Secretary of Transportation and the Inspector General of the Department of Transportation no later than—

(1) the first day of each fiscal year beginning after the date of enactment of this Act; or

(2) the date that is 60 days after the date of enactment of an appropriation Act for the fiscal year, if later.

(b) CONTENTS OF 5-YEAR FINANCIAL PLAN.—The 5-year financial plan for Amtrak shall include, at a minimum—

(1) all projected revenues and expenditures for Amtrak, including governmental funding sources;

(2) projected ridership levels for all Amtrak passenger operations;

(3) revenue and expenditure forecasts for nonpassenger operations,

(4) capital funding requirements and expenditures necessary to maintain passenger service which will accommodate predicted ridership levels and predicted sources of capital funding;

(5) operational funding needs, if any, to maintain current and projected levels of passenger service, including state-supported routes and predicted funding sources;

(6) projected capital and operating requirements, ridership, and revenue for any new passenger service operations or service expansions;

(7) an assessment of the continuing financial stability of Amtrak, as indicated by factors such as: the ability of the federal government to adequately meet capital and operating requirements, Amtrak's access to long-term and short-term capital markets, Amtrak's ability to efficiently manage its workforce, and Amtrak's ability to effectively provide passenger train service.

(8) lump sum expenditures of $10,000,000 or more and sources of funding.

(9) estimates of long-term and short-term debt and associated principle and interest payments (both current and anticipated);

(10) annual cash flow forecasts; and

(11) a statement describing methods of estimation and significant assumptions.

(c) STANDARDS TO PROMOTE FINANCIAL STABILITY.—In meeting the requirements of subsection (b) with respect to a 5-year financial plan, Amtrak shall—

(1) apply sound budgetary practices, including reducing costs and other expenditures, improving productivity, increasing revenues, or combinations of such practices; and

(2) use the categories specified in the financial accounting and reporting system developed under section 4652 when preparing its 5-year financial plan.

(d) ASSESSMENT BY DOT INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Transportation shall assess the 5-year financial plans prepared by Amtrak under this section to determine whether they meet the requirements of subsection (b), and may suggest revisions to any components thereof that do not meet those requirements.

(2) ASSESSMENT TO BE FURNISHED TO THE CONGRESS.—Tbe Inspector General shall furnish to the House of Representatives Committee on Appropriations, the Senate Committee on Appropriations, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation—

(A) an assessment of the annual budget within 90 days after receiving it from Amtrak; and

(B) an assessment of the remaining 4 years of the 5-year financial plan within 180 days after receiving it from Amtrak.

SEC. 15. INDEPENDENT AUDITOR TO ESTABLISH METHODOLOGIES FOR AMTRAK ROUTE AND SERVICE PLANNING DECISIONS.

(a) REVIEW.—The Secretary of Transportation shall, in consultation with the Federal Railroad Administration, execute a contract to obtain the services of an independent auditor or consultant to research and define Amtrak's past and current methodologies for determining intercity passenger rail routes and services.

(b) RECOMMENDATIONS.—The independent auditor or consultant shall recommend objective methodologies for determining such routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes.

(c) SUBMITTAL TO CONGRESS.—The Secretary shall submit recommendations received under subsection (b) to Amtrak, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be made available to the Secretary of Transportation, out of any amounts authorized by this title to be appropriated for the benefit of Amtrak and not otherwise obligated or expended, such sums as may be necessary to carry out this section.

SEC. 16. METRICS AND STANDARDS.

The Administrator of the Federal Railroad Administration shall, in consultation with Amtrak and host railroads, develop new or improve existing metrics and minimum standards for measuring the service quality of intercity train operations, including on-time performance, onboard services, stations, facilities, equipment, and other services.

SEC. 17. ON-TIME PERFORMANCE.

Section 24308 is amended by adding at the end the following:

(f) ON-TIME PERFORMANCE AND OTHER STANDARDS.—If the on-time performance of any intercity passenger train averages less than 80 percent for any consecutive 6-month period, or the service quality of intercity train operations for which minimum standards are established under section _____ 17 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 Act fails to meet those standards, Amtrak may petition the Surface Transportation Board to investigate whether, and to what extent, delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over the tracks of which the intercity passenger train operates, or by a regional authority providing commuter service, if any. In carrying out such an investigation, the Surface Transportation Board shall obtain information from all parties involved and make recommendations regarding reasonable measures to improve the service, quality, and on-time performance of the train.''.

SA 2595. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

PART —RAILROAD TRACK MODERNIZATION

SEC. ___1. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. ___ 2. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroads. Such grants shall be for rail transportation and ensuring that track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track. Grants may be provided under this chapter to a State or a group of States for, or in connection with, 1 or more rail capital projects that—

''(A) are listed in a State rail plan approved for such State under chapter 225 of this title; and

''(B) as determined by the Secretary, would primarily benefit intercity passenger rail infrastructure or services or freight rail transportation infrastructure or services and provide significant public benefits.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

''(i) condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services; and

''(iii) ensure that projects are part of a State rail plan.

''(C) GRANT ALLOCATIONS.—Of the total amount made available for the program, 50 percent shall be awarded on a discretionary basis for passenger rail projects, and the remaining 50 percent shall be apportioned to States to fund freight rail projects in accordance with a formula prescribed by the Secretary to weigh equally for each State—

''(i) the number of rail miles in active use in the State;

''(ii) the number of rail cars loaded in the States;

''(iii) the number of rail cars unloaded in the State; and

''(iv) the number of railroad and public road grade crossings in the State.

''(b) FEDERAL SHARE.—The Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 4635 of the Railroad Track Modernization Act of 2004, there are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, 2009, 2010 to carry out this section.

''§ 22302. State rail plans

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for review; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

''§ 22303. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system. A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''§ 22304. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(4) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(5) A statement of public financing issues for rail projects in the State.

''(6) An identification of rail infrastructure issues within the State that reflects consultation with all relevant sake holders.

''(7) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports.

''(8) A statement that the State is in compliance with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(4) shall include the following matters:

''(A) Two lists for rail capital projects, 1 for freight rail capital projects and 1 for inter-city passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

''§ 22305. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan-

''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to the requirements of section 135 of title 23.

''§ 22306. Standards and conditions

''A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under section 22301—

(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) shall be considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.).

''§ 22307. Definitions

In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SEC. ___ 3. GRANT PROGRAM FUNDING.

(a) IN GENERAL.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)) is amended by adding at the end the following:

''(D) RAIL INFRASTRUCTURE CATEGORY.—The term 'rail infrastructure category' means discretionary appropriations to the Secretary of Transportation for the provision of grants to States for railroad infrastructure investment activities subject to the obligation limitations on contract authority provided under chapter 223 of title 49, United States Code, or for which appropriations are provided in accordance with authorizations contained in that division.''.

(b) BUDGET AUTHORITY OUTLAYS.—For purposes of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)):

(1) BUDGET AUTHORITY.—The budget authority for the rail infrastructure category shall be—

(A) $300,000,000 for fiscal year 2005;
(B) $600,000,000 for fiscal year 2006;
(C) $900,000,000 for fiscal year 2007;
(D) $1,200,000,000 for fiscal year 2008;
(E) $1,500,000,000 for fiscal year 2009; and
(F) $1,500,000,000 for fiscal year 2010.

(2) OUTLAYS.—The level of outlays for the rail infrastructure category is—

(A) $60,000,000 for fiscal year 2005;
(B) $180,000,000 for fiscal year 2006;
(C) $360,000,000 for fiscal year 2007;
(D) $480,000,000 for fiscal year 2008;
(E) $900,000,000 for fiscal year 2009; and
(F) $1,140,000,000 for fiscal year 2010.

SEC. 171. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''March 31, 2004,'' and inserting ''March 31, 2014''.

SA 2596. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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 all after the first word and insert the following:

PART —RAIL MODERNIZATION

SEC. 1. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. 2. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroads. Such grants shall be for rail transportation and ensuring that track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track. Grants may be provided under this chapter to a State or a group of States for, or in connection with, 1 or more rail capital projects that—

''(A) are listed in a State rail plan approved for such State under chapter 225 of this title; and

''(B) as determined by the Secretary, would primarily benefit intercity passenger rail infrastructure or services or freight rail transportation infrastructure or services and provide significant public benefits.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

''(1) condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services; and

''(iii) ensure that projects are part of a State rail plan.

''(C) GRANT ALLOCATIONS.—Of the total amount made available for the program, 50 percent shall be awarded on a discretionary basis for passenger rail projects, and the remaining 50 percent shall be apportioned to States to fund freight rail projects in accordance with a formula prescribed by the Secretary to weigh equally for each State—

''(i) the number of rail miles in active use in the State;

''(ii) the number of rail cars loaded in the State;

''(iii) the number of rail cars unloaded in the State; and

''(iv) the number of railroad and public road grade crossings in the. State.

''(b) FEDERAL SHARE.—The Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 4635 of the Railroad Track Modernization Act of 2004, there are authorized to be appropriated to the Secretary of Transportation 2,000,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, 2009, 2010 to carry out this section.

''§ 22302. State rail plans

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for review; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

''§ 22303. Purposes

''(a) PURPOSE.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system. A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''§ 22304. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service,

''(3) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(4) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(5) A statement of public financing issues for rail projects in the State.

''(6) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(7) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports.

''(8) A statement that the State is in compliance with the requirements of section 22102.''

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(4) shall include the following matters:

''(A) Two lists for rail capital projects, 1 for freight rail capital projects and 1 for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made bar non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation; and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

''§ 22305. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—

''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to the requirements of section 135 of title 23.

''§ 22306. Standards and conditions

''A person that conducts rail operations over rail infrastructure constructed or unproved with funding provided in whole or in part in a grant made under section 22301—

(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) shall he considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.).

''§ 22307. Definitions

In this chapter:

''(1) PRIVATE BENEFIT.—The terra 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SEC. 3. GRANT PROGRAM FUNDING.

(a) IN GENERAL.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)) is amended by adding at the end the following:

''(D) RAIL INFRASTRUCTURE CATEGORY.—The term 'rail infrastructure category' means discretionary appropriations to the Secretary of Transportation for the provision of grants to States for railroad infrastructure investment activities subject to the obligation limitations on contract authority provided under chapter 223 of title 49, United States Code, or for which appropriations are provided in accordance with authorizations contained in that division.''.

(b) BUDGET AUTHORITY; OUTLAYS;—For purposes of section 251(c) of the Balanced budget and emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)):

(1) BUDGET AUTHORITY.—The budget authority for the rail infrastructure category shall be—

(A) $300,000,000 for fiscal year 2005;
(B) $600,000,000 for fiscal year 2006;
(C) $900,000,000 for fiscal year 2007;
(D) $1,200,000,000 for fiscal year 2008;
(E) $1,500,000,000 for fiscal year 2009; and
(F) $1,500,000,000 for fiscal year 2010.

(2) OUTLAYS.—The level of outlays for the rail infrastructure category is—

(A) $60,000,000 for fiscal year 2005;
(B) $180,000,000 for fiscal year 2006;
(C) $360,000,000 for fiscal year 2007;
(D) $480,000,000 for fiscal year 2008;
(E) $900,000,000 for fiscal year 2009; and
(F) $1,140,000,000 for fiscal year 2010.

SEC. 171. EXTENSION OF CUSTOMS USER FEES.

Section 130310)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''March 31, 2004,'' and inserting ''March 31, 2014''.

SA 2597. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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 all after the first word and insert the following:

PART —RAIL MODERNIZATION

SEC. —1. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. —2. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''Sec.
''22301. Capital grants for railroad track
''22302. State rail plans
''22303. Purposes
''22304. Content
''22305. Approval
''22306. Standards and conditions
''22307. Definitions

''22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a, program of capital grants for the rehabilitation, preservation, or improvement of railroads. Such grants shall be for rail transportation and ensuring that track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track. Grants may be provided under this chapter to a State or a group of States for, or in connection with, 1 or more rail capital projects that—

''(A) are listed in a State rail plan approved for such State under chapter 225 of this title; and

''(B) as determined by the Secretary, would primarily benefit intercity passenger rail infrastructure or services or freight rail transportation infrastructure or services and provide significant public benefits.

''(2) REGULATIONS.—

A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

'' (i) condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services; and

''(iii) ensure that projects are part of a State rail plan.

''(C) GRANT ALLOCATIONS.—Of the total amount made available for-the program, 50 percent shall be awarded on a discretionary basis for passenger rail projects, and the remaining 50 percent shall be apportioned to States to fund freight rail projects in accordance with a formula. prescribed by the Secretary to weigh equally for each State—

''(i) the number of rail miles in active use in the State;

''(ii) the number of rail cars loaded in the State;

''(iii) the number of rail cars unloaded in the State; and

''(iv) the number of railroad and public road grade crossings in the State.

''(b) FEDERAL SHARE.—The Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) AUTHORIZATION OF APPROPRIATIONS.—Not-withstanding section 4635 of the Railroad Track Modernization Act of 2004, there are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, 2009, 2010 to carry out this section.

''§ 22302. State rail plans

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for review; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

''§ 22303. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system. A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''§ 22304. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(4) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(5) A statement of public financing issues for rail projects in the State.

''(6) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(7) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports.

''(8) A statement that the State is in compliance with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(4) shall include the following matters:

''(A) Two lists for rail capital projects, 1 for freight rail capital projects and 1 for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects, and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.
''(E) Environmental impact.
''(F) Economic and employment impacts.
''(G) Projected ridership and other service measures for passenger rail projects.
''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

''§ 22305. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—
''(1) the plan meets all of the requirements applicable to State plans under this chapter;
''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—
''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and
''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and
''(3) the content of the plan is coordinated with State transportation plans developed pursuant to the requirements of section 135 of title 23.

''§ 22306. Standards and conditions

''A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under section 22301—
(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and
(2) shall he considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.).
require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.
''(g) LABOR STANDARDS.—
''(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.
''(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).

''§ 22307. Definitions

In this chapter:
''(1) PRIVATE BENEFIT.—The term 'private benefit'—
''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and
''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.
''(2) PUBLIC BENEFIT.—The term 'public benefit'—
''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and
''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.''.
(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:
''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SEC. 3. GRANT PROGRAM FUNDING.

(a) IN GENERAL.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)) is amended by adding at the end the following:
''(D) RAIL INFRASTRUCTURE CATEGORY.—The term 'rail infrastructure category' means discretionary appropriations to the Secretary of Transportation for the provision of grants to States for railroad infrastructure investment activities subject to the obligation limitations on contract authority provided under chapter 223 of title 49, United States Code, or for which appropriations are provided in accordance with authorizations contained in that division.''.
(b) BUDGET AUTHORITY; OUTLAYS;—For purposes of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)):
(1) BUDGET AUTHORITY.—The budget authority for the rail infrastructure category shall be—
(A) $300,000,000 for fiscal year 2005;
(B) $600,000,000 for fiscal year 2006;
(C) $900,000,000 for fiscal year 2007;
(D) $1,200,000,000 for fiscal year 2008;
(E) $1,500,000,000 for fiscal year 2009; and
(F) $1,500,000,000 for fiscal year 2010.
(2) OUTLAYS.—Thc level of outlays for the rail infrastructure category is—
(A) $60,000,000 for fiscal year 2005;
(B) $180,000,000 for fiscal year 2006;
(C) $360,000,000 for fiscal year 2007;
(D) $480,000,000 for fiscal year 2008,
(E) $900,000,000 for fiscal year 2009; and
(F) $1,140,000,000 for fiscal year 2010.

SA 2598. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

PART —. RAILROAD TRACK MODERNIZATION

SEC. 1. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. 2. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''Sec.
''22301. Capital grants for railroad track
''22302. State rail plans
''22303. Purposes
''22304. Content
''22305. Approval
''22306. Standards and conditions
''22307. Definitions

''§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—
''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroads. Such grants shall be for rail transportation and ensuring that track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track. Grants may be provided under this chapter to a State or a group of States for, or in connection with, 1 or more rail capital projects that—
''(A) are listed in a State rail plan approved for such State under chapter 225 of this title; and
''(B) as determined by the Secretary, would primarily benefit intercity passenger rail infrastructure or services or freight rail transportation infrastructure or services and provide significant public benefits.
(2) REGULATIONS.—
''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.
''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—
''(i) condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically and efficiently utilized;
''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services; and
''(iii) ensure that projects are part of a State rail plan.
''(C) GRANT ALLOCATIONS.—Of the total amount made available for the program, 50 percent shall be awarded on a discretionary basis for passenger rail projects, and the remaining 50 percent shall be apportioned to States to fund freight rail projects in accordance with a formula prescribed by the Secretary to weigh equally for each State—
''(i) the number of rail miles in active use in the State;
''(ii) the number of rail cars loaded in the State;
''(iii) the number of rail cars unloaded in the State; and
''(iv) the number of railroad and public road grade crossings in the State.
''(b) FEDERAL SHARE.—The Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.
''(c) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 4635 of the Railroad Track Modernization Act of 2004, there are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, 2009, 2010 to carry out this section.

''§ 22302. State rail plans

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.
''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—
''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for review; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

''§ 22303. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system. A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''§ 22304. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and commnunity impacts.

''(4) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(5) A statement of public financing issues for rail projects in the State.

''(6) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(7) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports.

''(8) A statement that the State is in compliance, with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) ''PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(4) shall include the following matters:

''(A) Two lists for rail capital projects, 1 for freight rail capital projects and 1 for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that, the Secretary determines appropriate.

''§ 22305. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—

''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to the requirements of section 135 of title 23.

''§ 22306. Standards and conditions

''A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under section 22301—

''(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

''(2) shall be considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.).

require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

''(g) LABOR STANDARDS.—

''(1) PREVAILING WAGES—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

''(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).

''§ 22307. Definitions

In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary, and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRAFTS FOR RAILROAD TRACK ..... 22301''.

SEC. ___3. GRANT PROGRAM FUNDING.

(a) IN GENERAL.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)) is amended by adding at the end the following:

''(D) RAIL INFRASTRUCTURE CATEGORY.—The term 'rail infrastructure category' means discretionary appropriations to the Secretary of Transportation for the provision of grants to States for railroad infrastructure investment activities subject to the obligation limitations on contract authority provided under chapter: 223 of title 49, United States Code, or for which appropriations are provided in accordance with authorizations contained in that division.''.

(b) BUDGET AUTHORITY; OUTLAYS.—For purposes of section 251(c) of the Balanced budget and emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)):

(1) BUDGET AUTHORITY.—The budget authority for the rail infrastructure category shall be—

(A) $300,000,000 for fiscal year 2005;
(B) $600,000,000 for fiscal year 2006;
(C) $900,000,000 for fiscal year 2007;
(D) $1,200,000,000 for fiscal year 2008;
(E) $1,500,000,000 for fiscal year 2009; and
(F) $1,500,000,000 for fiscal year 2010.

(2) OUTLAYS.—The level of outlays for the rail infrastructure category is—

(A) $60,000,000 for fiscal year 2005;
(B) $180,000,000 for fiscal year 2006;
(C) $360,000,000 for fiscal year 2007;
(D) $480,000,000 for fiscal year 2008;
(E) $900,000,000 for fiscal year 2009; and
(F) $1,140,000,000 for fiscal year 2010.

SEC. ___171. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 5Fc(j)(3)) is amended by striking ''March 31, 2004,'' and inserting ''March 31, 2014''.

SA 2599. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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 all after the first word and insert the following:

PART —RAIL MODERNIZATION

SEC. 1. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. 2. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title, 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL, GRANTS FOR RAILROAD TRACK

''§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroads. Such grants shall be for rail transportation and ensuring that track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track. Grants may be provided under this chapter to a State or a group of States for, or in connection with, 1 or more rail capital projects that—

''(A) are listed in a State rail plan approved for such State under chapter 225 of this title; and

''(B) as determined by the Secretary, would primarily benefit intercity passenger rail infrastructure or services or freight rail transportation infrastructure or services and provide significant public benefits.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

''(i) condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services; and

''(iii) ensure that projects are part of a State rail plan.

''(C) GRANT ALLOCATIONS.—Of the total amount made available for the program, 50 percent shall be awarded on a discretionary basis for passenger rail projects, and the remaining 50 percent shall be apportioned to States to fund freight rail projects in accordance with a formula prescribed by the Secretary to weigh equally for each State—

''(1) the number of rail miles in active use in the State;

''(ii) the number of rail cars loaded in the State;

''(iii) the number of rail cars unloaded in the State; and

''(iv) the number of railroad and public road grade crossings in the State.

''(b) FEDERAL SHARE.—The Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 4635 of the Railroad Track Modernization Act of 2004, there are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, 2009, 2010 to carry out this section.

''§ 22302. State rail plans

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for review; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

''§ 22303. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system. A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''§ 22304. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(4) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(5) A statement of public financing issues for rail projects in the State.

''(6) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(7) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports.

''(g) A statement that the State is in compliance with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(4) shall include the following matters:

''(A) Two lists for rail capital projects, 1 for freight rail capital projects and 1 for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made, by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

''22305. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—

''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to the requirements of section 135 of title 23.

''22306. Standards and conditions

''A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under section 22301—

(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) shall be considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.).

require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

''(g) LABOR STANDARDS.—

''(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in

construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

''(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).

''22307. Definitions

In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

''(B) shall he determined on a project-by-project basis, based upon an agreement between the parties.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SA 2600. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

PART —RAILROAD TRACK MODERNIZATION

SEC. 1. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. 2. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''Sec.
''22301. Capital grants for railroad track
''22302. State rail plans
''22303. Purposes
''22304. Content
''22305. Approval
''22306. Standards and conditions
''22307. Definitions

''§ 122301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroads. Such grants shall be for rail transportation and ensuring that track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track. Grants may be provided under this chapter to a State or a group of States for, or in connection with, 1 or more rail capital projects that—

''(A) are listed in a State rail plan approved for such State under chapter 225 of this title; and

''(B) as determined by the Secretary, would primarily benefit intercity passenger rail infrastructure or services or freight rail transportation infrastructure or services and provide significant public benefits.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria, that—

''(i) condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services; and

''(iii) ensure that projects are part of a State rail plan.

''(C) GRANT ALLOCATIONS.—Of the total amount made available for the program, 50 percent shall be awarded on a discretionary basis for passenger rail projects, and the remaining 50 percent shall be apportioned to States to fund freight rail projects in accordance with a formula prescribed by the Secretary to weigh equally for each State—

''(i) the number of rail miles in active use in the State;

''(ii) the number of rail cars loaded in the State;

''(iii) the number of rail cars unloaded in the State; and

''(iv) the number of railroad and public road grade crossings in the State.

''(b) FEDERAL SHARE.—The Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 4635 of the Railroad Track Modernization Act of 2004, there are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, 2009, 2010 to carry out this section.

''§ 22302. State rail plans

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for review; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for re-approval by the Secretary.

''§ 22303. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system. A State shall provide adequate and reasonable notice, and opportunity for commitment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''§ 22304. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(4) A long-range rail investment program for current and future freight, and passenger infrastructure in the State that meets the requirements of subsection (b).

''(5) A statement of public financing issues for rail projects in the State.

''(6) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(7) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports.

''(8) A statement that the State is in compliance with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

'' (1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(4) shall include the following matters:

''(A) Two lists for rail capital projects, 1 for freight rail capital projects and 1 for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such in project; and

''(B) a statement of the correlation between—

''(1) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

''§ 22305. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—

''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to the requirements of section 135 of title 23.

''§ 22306. Standards and conditions

''A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under section 22301—

(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) shall be considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.).

require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

''(g) LABOR STANDARDS.—

''(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

''(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).

''§ 22307. Definitions

In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SA 2601. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

PART —RAILROAD TRACK MODERNIZATION

SEC. ___1. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. ___2. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''Sec.
''22301. Capital grants for railroad track
''22302. State rail plans
''22303. Purposes
''22304. Content
''22305. Approval
''22306. Standards and conditions
''22307. Definitions

''§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroads. Such grants shall be for rail transportation and ensuring that track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track. Grants may be provided under this chapter to a State or a group of States for, or in connection with, 1 or more rail capital projects that—

''(A) are listed in a State rail plan approved for such State under chapter 225 of this title; and

''(B) as determined by the Secretary, would primarily benefit intercity passenger rail infrastructure or services or freight rail transportation infrastructure or services and provide significant public benefits.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

''(i) condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable fixture demand for rail services; and

''(iii) ensure that projects are part of a State rail plan.

''(C) GRANT ALLOCATIONS.—Of the total amount made available for the program, 50 percent shall be awarded on a discretionary basis for passenger rail projects, and the remaining 50 percent shall be apportioned to States to fund freight rail projects in accordance with a formula prescribed by the Secretary to weigh equally for each State—

''(i) the number of rail miles in active use in the State;

''(ii) the number of rail cars loaded in the State;

''(iii) the number of rail cars unloaded in the State; and

''(iv) the number of railroad and public road grade crossings in the State.

''(b) FEDERAL SHARE.—The Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 4635 of the Railroad Track Modernization Act of 2004, there are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, 2009, 2010 to carry out this section.

''§ 22302. State rail plans

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for review; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

''22303. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system. A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by

rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

"22304. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(4) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(5) A statement of public financing issues for rail projects in the State.

''(6) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(7) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports.

''(8) A statement that the State is in compliance with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

'' (1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(4) shall include the following matters:

''(A) Two lists for rail capital projects, 1 for freight rail capital projects and 1 for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

"§ 22305. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—

''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to the requirements of section 135 of title 23.

"§ 22306. Standards and conditions

''A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under section 22301—

(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) shall be considered a carrier for purposes of the Railway Labor Act. (43 U.S.C. 151 et seq.).

require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

''(g) LABOR STANDARDS.—

''(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

''(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).

"§ 22307. Definitions

In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a, benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SA 2602. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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 1005, beginning with line 13, strike through line 9 on page 1020 and insert the following:

SUBTITLE F—AMTRAK REAUTHORIZATION

SEC. 4601. AUTHORIZATION OF APPROPRIATIONS.

The text of section 24104 of title 49, United States Code, is amended to read as follows:

''There are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of fiscal years 2004, 2005, 2006, 2007, 2008, and 2009 for the benefit of AMTRAK for operating and capital expenses.''.

SA 2603. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

PART —RAIL MODERNIZATION

SEC. I. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. 2. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''Sec.
''22301 Capital grants for railroad track
''22302 State rail plans
''22303 Purposes
''22304 Content
''22305 Approval
''22306 Standards and conditions
''22307 Definitions

"§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

'' (1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroads. Such grants shall be for rail transportation and ensuring that track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track. Grants may be provided under this chapter to a State or a group of States for, or in connection with, 1 or more rail capital projects that—

''(A) are listed in a State rail plan approved for such State under chapter 225 of this title; and

''(B) as determined by the Secretary, would primarily benefit intercity passenger rail infrastructure or services or freight rail transportation infrastructure or services and provide significant public benefits.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

''(i) condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services; and

''(iii) ensure that projects are part of a State rail plan.

''(C) GRANT ALLOCATIONS.—Of the total amount made available for the program, 50 percent shall be awarded on a discretionary basis for passenger rail projects, and the remaining 50 percent shall be apportioned to States to fund freight rail projects in accordance with a formula prescribed by the Secretary to weigh equally for each State—

''(i) the number of rail miles in active use in the State;

''(ii) the number of rail cars loaded in the State;

''(iii) the number of rail cars unloaded in the State; and

''(iv) the number of railroad and public road grade crossings in the State.

''(b) FEDERAL SHARE.—The Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 4635 of the Railroad Track Modernization Act of 2004, there are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, 2009, 2010 to carry out this section.

''§ 22302. State rail plans

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for review; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

''§ 22303. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system. A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''§ 22304. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(4) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(5) A statement of public financing issues for rail projects in the State.

''(6) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(7) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports.

''(8) A statement that the State is in compliance with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(4) shall include the following matters:

''(A) Two lists for rail capital projects, 1 for freight rail capital projects and 1 for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

''§ 22305. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—

''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to the requirements of section 135 of title 23.

''§ 22306. Standards and conditions

''A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under section 22301—

(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) shall be considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.).

''§ 22307. Definitions

In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the parties.''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SA 2604. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1072, 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. 1106. FUNDING FORMULA.

Notwithstanding any other provision of this Act, all transportation funding shall be determined using the formula under the Transportation Equity Act for the 21st Century (Public Law 105–178) as in effect before the date of enactment of this Act.

SA 2605. Mr. MCCAIN submitted an amendment intended to be proposed to

amendment SA 2388 proposed by Mrs. HUTCHISON (for herself, Mr. KYL, Mr. LEVIN, Mr. GRAHAM of Florida, Mr. MCCAIN, Ms. STABENOW, and Mrs. FEINSTEIN) to the amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, 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:

''(e) FUNDING CAP FROM HIGHWAY TRUST FUND.—Prior to making any apportionments or allocations under Chapter 1 of U.S.C. 23 for fiscal year 2009, the Secretary shall compare the sum of all apportionments and allocations for fiscal years 2004 through 2008 plus the projected apportionments and allocations for fiscal year 2009 to the funding cap of $255,000,000,000. If the total sum of such apportionments and allocations exceeds the funding cap of $255,000,000,000, the Secretary shall proportionally reduce all apportionments and allocations for fiscal year 2009 so the total sum equals $255,000,000,000.

SA 2606. Mr. BURNS submitted an amendment intended to be proposed by him to the bill S. 1072, 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. ___. CLARIFICATION OF RAIL TRANSPORTATION POLICY.

Section 10101 of title 49, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''In regulating''; and

(2) by adding at the end the following:

''(b) PRIMARY OBJECTIVES.—The primary objectives of the rail transportation policy of the United States are as follows:

''(1) To promote effective competition among rail carriers at origins and destinations.

''(2) To maintain reasonable rates in the absence of effective competition.

''(3) To maintain consistent and efficient rail transportation service for shippers, including the timely provision of rail cars requested by shippers.

''(4) To ensure that smaller carload and intermodal shippers are not precluded from accessing rail systems due to volume requirements.''.

SA 2607. Mr. BURNS submitted an amendment intended to be proposed by him to the bill S. 1072, 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. ___. ARBITRATION OF CERTAIN RAIL RATE, SERVICE, AND OTHER DISPUTES.

(a) IN GENERAL.—

(1) AUTHORITY.—Chapter 117 of title 49, United States Code, is amended by adding after section 11707 the following new section:

''§ 11708. Arbitration of certain rail rate, service, and other disputes

''(a) ELECTION OF ARBITRATION.—A dispute described in subsection (b) shall be submitted for resolution by arbitration upon the election of any party to the dispute that is not a rail carrier.

''(b) COVERED DISPUTES.—(1) Except as provided in paragraph (2), subsection (a) applies to any dispute between a party described in subsection (a) and a rail carrier that—

''(A) arises under section 10701(c), 10701(d), 10702, 10704(a)(1), 10707, 10741, 10745, 10746, 11101(a), 11102, 11121, 11122, or 11706 of this title; and

''(B) involves—

''(i) the payment of money;

''(ii) a rate or charge imposed by the rail carrier; or

''(iii) transportation or other service by the rail carrier.

''(2) Subsection (a) does not apply to a dispute if the resolution of the dispute would necessarily involve the promulgation of regulations generally applicable to all rail carriers.

''(c) ARBITRATION PROCEDURES.—The Secretary of Transportation shall prescribe in regulations the procedures for the resolution of disputes submitted for arbitration under subsection (a). The regulations shall include the following:

''(1) Procedures, including time limits, for the selection of an arbitrator or panel of arbitrators for a dispute from among arbitrators listed on the roster of arbitrators established and maintained by the Secretary under subsection (d)(1).

''(2) Policies, requirements, and procedures for the compensation of each arbitrator for a dispute to be paid by the parties to the dispute.

''(3) Procedures for expedited arbitration of a dispute, including procedures for discovery authorized in the exercise of discretion by the arbitrator or panel of arbitrators.

''(d) SELECTION OF ARBITRATORS.—(1) The Secretary of Transportation shall establish, maintain, and revise as necessary a roster of arbitrators who—

''(A) are experienced in transportation or economic issues within the jurisdiction of the Board or issues similar to those issues;

''(B) satisfy requirements for neutrality and other qualification requirements prescribed by the Secretary;

''(C) consent to serve as arbitrators under this section; and

''(D) are not officers or employees of the United States.

''(2) For a dispute involving an amount not in excess of $1,000,000, the regulations under subsection (c) shall provide for arbitration by a single arbitrator who—

''(A) is selected by the parties to the dispute; or

''(B) if the parties cannot agree, is selected by the Secretary from among the arbitrators listed on the roster of arbitrators under paragraph (1).

''(3)(A) For a dispute involving an amount in excess of $1,000,000, the regulations under subsection (c) shall provide for arbitration by a panel of three arbitrators selected as follows:

''(i) One arbitrator selected by the party electing the arbitration.

''(ii) One arbitrator selected by the rail carrier or all of the rail carriers who are parties to the dispute, as the case may be.

''(iii) One arbitrator selected by the two arbitrators selected under clauses (i) and (ii).

''(B) If a selection of an arbitrator is not made under clause (ii) or (iii) of subparagraph (A) within the time limits prescribed in the regulations, then the Secretary shall select the arbitrator from among the arbitrators listed on the roster of arbitrators under paragraph (1).

''(e) DISPUTES OVER RATES OR CHARGES.—(1) The requirements of this subsection apply to a dispute submitted under this section concerning a rate or charge imposed by a rail carrier.

''(2)(A) Subject to subparagraph (B), the decision of an arbitrator or panel of arbitrators in a dispute on an issue described in paragraph (1) shall be the final offer of one of the parties to the dispute.

''(B) A decision under subparagraph (A) may not provide for a rate for transportation by a rail carrier that would result in a revenue-variable cost percentage for such transportation that is less than 180 percent, as determined under standards applied in the administration of section 10707(d) of this title.

''(3) If the party electing arbitration of a dispute described in paragraph (1) seeks compensation for damages incurred by the party as a result of a specific rate or charge imposed by a rail carrier for the transportation of items for the party and the party alleges an amount of damages that does not exceed $500,000 for any year as a result of the imposition of the specific rate or charge, the arbitrator, in making a decision on the dispute, shall consider the rates or charges, respectively, that are imposed by rail carriers for the transportation of similar items under similar circumstances in rail transportation markets where there is effective competition, as determined under standards applied by the Board in the administration of section 10707 of this title.

''(f) TIME FOR ISSUANCE OF ARBITRATION DECISION.—Notwithstanding any other provision of this subtitle limiting the time for the taking of an action under this subtitle, the arbitrator or panel of arbitrators for a dispute submitted for resolution under this section shall issue a final decision on the dispute within the maximum period after the date on which the arbitrator or panel is selected to resolve the dispute under this section, as follows:

''(1) In the case of a dispute involving $1,000,000 or less, 120 days.

''(2) In the case of a dispute involving more than $1,000,000, 180 days.

''(g) AUTHORIZED RELIEF.—A decision of an arbitrator or panel of arbitrators under this section shall grant relief in either or both of the following forms:

''(1) Monetary damages, to the extent authorized to be provided by the Board in such a dispute under this subtitle.

''(2) An order that requires specific performance under any applicable law, including any law limiting rates to reasonable rates, for any period not in excess of two years beginning on the date of the decision.

''(h) JUDICIAL CONFIRMATION AND REVIEW.—The following provisions of title 9 shall apply to an arbitration decision issued in a dispute under this section:

''(1) Section 9 (relating to confirmation of an award in an arbitration decision), which shall be applied as if the parties had entered into an agreement under title 9 to submit the dispute to the arbitration and had provided in that agreement for a judgment of an unspecified court to be entered on the award made pursuant to the arbitration.

''(2) Section 10 (relating to judicial vacation of an award in an arbitration decision).''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 11707 the following:

''11708. Arbitration of certain rail rate, service, and other disputes.''.

(b) TIME FOR IMPLEMENTING CERTAIN REQUIREMENTS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations, prescribe a roster of arbitrators, and complete any other action that is necessary for the implementation of section 11708 of title 49, United States Code (as added by subsection (a)).

SA 2608. Mr. BURNS (for himself, Mr. DORGAN, and Mr. ROCKEFELLER) submitted an amendment intended to be proposed by him to the bill S. 1072, 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. ___. AREAS OF INADEQUATE RAIL COMPETITION.

(a) DESIGNATION AND REMEDIES.—

(1) IN GENERAL.—Chapter 105 of title 49, United States Code, is amended by adding at the end the following new section:

''§ 10503. Areas of inadequate rail competition

''(a) DESIGNATION.—The Board shall designate any State or part of a State as an area of inadequate rail competition after finding either of the grounds set forth in subsection (b). An area of inadequate rail competition may be limited to be composed of the facilities of a group of shippers or receivers of one or more specific commodities within a geographic area.

''(b) GROUNDS FOR DESIGNATION.—The grounds for designating a State or part of a State as an area of inadequate rail competition are as follows:

''(1) The State or part of a State encompasses a significant number of rail shipping origins and destinations that are served exclusively by only one Class I railroad.

''(2) A significant number of the persons that ship by rail or receive rail shipments in the State or part of a State—

''(A) usually find it necessary to pay rates for the rail shipments that exceed the rates necessary to yield recovery by the rail carrier of 180 percent of revenue-variable costs, as determined under standards applied in the administration of section 10707(d) of this title; or

''(B) have experienced competitive disadvantage in the marketplace or other economic adversity because of high cost or poor quality of rail service in the State or part of a State, as the case may be.

''(c) AUTHORIZED PETITIONERS.—The following persons are authorized to petition the Board for a designation of a State or part of a State as an area of inadequate rail competition:

''(1) The chief executive of the State or another official of the State who is designated to do so by the chief executive or is authorized to do so under the laws of that State.

''(2) A Member of Congress from the State.

''(3) As provided in section 10504 of this title, the Rail Customer Advocate of the Department of Agriculture and any State official referred to in subsection (a)(2) of such section.

''(4) A person that ships by rail or receives rail shipments in that State or part of a State.

''(d) ACTIONS.—Upon designating a State or a part of a State as an area of inadequate rail competition, the Board shall attempt to resolve, within 60 days after the date of the designation, the conditions described in subsection (b) that justify the designation. In addition to providing other remedies authorized by law, the Board may, when requested in a petition, order any of the following actions:

''(1) Provision of reciprocal switching and access to tracks of another rail carrier beyond the limits specified in section 11102(a) of this title.

''(2) Haulage transportation of railroad cars by a rail carrier to or from facilities that such carrier alone physically serves on behalf of another rail carrier, for a fee prescribed by the Board.

''(3) Regarding rates on any rail segments within or connected to the area of inadequate rail competition on which rail service is susceptible to delay or interruption due to traffic congestion—

''(A) expedited review of the reasonableness of the rates under section 10701(d)(3) of this title; or

''(B) expedited final offer arbitration of the reasonableness of the rates under section 11708(e) of this title.

''(4) Expedited review, under section 10701(d)(3) of this title, of the reasonableness of—

''(A) increases in rates or other charges; and

''(B) new transportation service tariffs.

''(5) Expedited review of whether a rate violates the prohibition against discriminatory rates contained in section 10741 of this title, without regard to subsection (b)(2) of such section.

''(e) LIMITATIONS AND CONDITIONS APPLICABLE TO SPECIFIC REMEDIES.—(1) In the case of a petition for an order for reciprocal switching or access to tracks of another rail carrier under subsection (d)(1), the Board may not require that there be evidence of anticompetitive conduct by a rail carrier as a prerequisite for ordering such action.

''(2) In the case of a petition for expedited review of rates or final offer arbitration of rates under subsection (d)(3)—

''(A) the Board or arbitrator or panel of arbitrators, as the case may be, shall accord, with respect to rail transportation of a specific commodity, significant persuasive weight to evidence comparing—

''(i) rates charged for rail transportation of various quantities of that commodity within the area of inadequate rail competition; and

''(ii) rates charged for rail transportation of similar quantities of that commodity or any similar commodity or commodities in areas where there is competition among rail carriers for shipments of such commodity or commodities; and

''(B) the Board or arbitrator or panel of arbitrators, as the case may be, shall not apply the stand-alone cost test or any other test that the Board applies in determining the reasonableness of rates reviewed in cases not involving rail service in an area of inadequate rail competition.

''(3) In the case of a petition for expedited review, under subsection (d)(4), of an increase of a rate or other charge or the imposition of a new service tariff by a rail carrier—

''(A) the rail carrier shall have the burden of proving the reasonableness of the increase or tariff charge; and

''(B) the Board shall consider any evidence comparing—

''(i) the increased rate or other charge, or the tariff charge, as the case may be; and

''(ii) corresponding rates, other charges, or new service tariff charges, respectively, imposed for rail transportation in areas where there is a significant level of competition among the rail carriers.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

10503. Areas of inadequate rail competition.''.

(b) STUDY AND REPORT ON AREAS OF INADEQUATE RAIL COMPETITION.—

(1) STUDY REQUIRED.—The Rail Customer Advocate of the Department of Agriculture shall carry out a study of the process provided under section 10503 of title 49, United States Code (as added by subsection (a)), for challenging and remedying conditions described in subsection (b) of such section in States and parts of States designated under such section as areas of inadequate rail competition insofar as such conditions adversely affect rail shippers of agricultural or forestry commodities and products.

(2) FINDINGS ON EFFECTIVENESS OF PROCESS.—The Rail Customer Advocate shall make findings, on the basis of the study under paragraph (1), regarding the effectiveness of the process for remedying the conditions studied, particularly in the case of customers that ship agricultural or forestry commodities and products by rail in annual volumes of 1,500 rail cars or less.

(3) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Rail Customer Advocate shall submit to Congress a report on the results of the study under paragraph (1), including the findings required under paragraph (2).

SA 2609. Mr. BURNS (for himself, Mr. DORGAN, and Mr. ROCKEFELLER) submitted an amendment intended to be proposed by him to the bill S. 1072, 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. _____. PERIODIC STUDY OF COMPETITION AMONG RAIL CARRIERS.

(a) REQUIREMENT FOR STUDY.—

(1) TRIENNIAL STUDY.—Chapter 101 of title 49, United States Code, is amended by adding at the end the following new section:

''§ 10103. Periodic study of rail carrier competition and processes of the Board

''(a) REQUIREMENT FOR STUDY.—Every three years, the Secretary of Transportation shall conduct a comprehensive study of rail carrier competition and the processes of the Board. The study shall include an assessment of the following:

''(1) The availability of effective competitive options among and between rail carriers.

''(2) The effectiveness of the processes of the Surface Transportation Board, including the process used for determining the reasonableness of rates of rail carriers.

''(3) The availability to rail users of effective regulatory dispute resolution options.

''(b) STUDY TO INCLUDE ASSESSMENT OF RAIL-TO-RAIL COMPETITION.—In carrying out the study, the Board shall assess the overall level of rail-to-rail competition in the rail carrier industry in the United States. In making the assessment, the Board shall consider the views of users of the services of rail carriers.

''(c) REPORT TO CONGRESS.—Not later than November 15 of each year in which a study is conducted under subsection (a), the Secretary shall submit a report on the results of the study to Congress. The report shall include the following:

''(1) The Board's assessment of the overall level of rail-to-rail competition in the rail carrier industry in the United States.

''(2) The markets that have limited rail-to-rail competition.

''(3) Any recommendations for enhancing rail-to-rail competition, particularly in markets identified as having limited rail-to-rail competition.

''(4) An assessment of the Board's performance of its purpose to promote and enhance competition among and between railroads by—

''(A) addressing complaints regarding rates, charges, and service; and

''(B) promulgating regulations of general applicability or taking other actions.

''(5) Any recommendations for modification of any of the decisions of the Board (or

decisions of the former Interstate Commerce Commission continuing in effect) or for modification of the general authority or jurisdiction of the Board.

''(6) Any other findings, analyses, assessments, and recommendations that result from the study.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

''10103. Periodic study of rail carrier competition and processes of the Board.''.

(b) TIME FOR FIRST STUDY.—The first study under section 10103 of title 49, United States Code (as added by subsection (a)), shall be carried out not later than two years after the date of the enactment of this Act.

SA 2610. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, 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. ___. DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM

''(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1814(a)), is amended by adding at the end the following:

''§ 178. Delta Region Transportation Development Program

''(a) IN GENERAL.—The Secretary shall carry out a program to—

''(1) support and encourage multistate transportation planning and corridor development;

''(2) provide for transportation project development;

''(3) facilitate transportation decisionmaking; and

''(4) support transportation construction.

''(b) ELIGIBLE RECIPIENTS.—A State transportation department and metropolitan planning organization may receive and administer funds provided under the program.

''(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under the program for multistate highway and transit planning, development, and construction projects.

''(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by section 134 and 135.

''(e) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under the program based on—

''(1) whether the project is located—

''(A) in an area that is part of the Delta Regional Authority; and

''(B) on the Federal-aid system;

''(2) endorsement of the project by the State department of transportation; and

''(3) evidence of the ability to complete the project.

''(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

''(1) encourage State and local officials to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

''(2) give priority to projects that emphasize multimodal planning, including planning for operational improvements that—

''(A) increase the mobility of people and goods;

''(B) improve the safety of the transportation system with respect to catastrophic—

''(i) natural disasters; or

''(ii) disasters caused by human activity; and

''(C) contribute to the economic vitality of the area in which the project is being carried out.

''(g) FEDERAL SHARE.—Amounts provided by the Delta Regional Authority to carry out a project under this section shall be applied to the non-Federal share required by section 120.

''(h) AVAILABILITY OF FUNDS.—Amounts made available to carry out this section shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter I of title 23, United States Code (as amended by section 1841(b)), is amended by adding at the end the following:

''178. Delta Regional Transportation Development Program.''.''

On page 678, after line 5, insert the following:

''(16) DELTA REGIONAL TRANSPORTATION DEVELOPMENT PROGRAM.—For the Delta Region transportation development program, $400,000,000 for each of fiscal years 2004 through 2009.''

SA 2611. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, 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. . DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States code (as amended by section 1814(a)), is amended by adding at the end the following:

''§ 178. Delta Region Transportation Development Program

''(a) IN GENERAL.—The Secretary shall carry out a program to—

''(1) support and encourage multistate transportation planning and corridor development;

''(2) provide for transportation project development;

''(3) facilitate transportation decisionmaking; and

''(4) support transportation construction.

''(b) ELIGIBLE RECIPIENTS.—A State transportation department and metropolitan planning organization may receive and administer funds provided under the program.

''(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under the program for multistate highway and transit planning, development, and construction projects.

''(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by section 134 and 135.

''(e) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under the program based on—

''(1) whether the project is located—

''(A) in an area that is part of the Delta Regional Authority; and

''(B) on the Federal-aid system;

''(2) endorsement of the project by the State department of transportation; and

''(3) evidence of the ability to complete the project.

''(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

''(1) encourage State and local officials to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

''(2) give priority to projects that emphasize multimodal planning, including planning for operational improvements that—

''(A) increase the mobility of people and goods;

''(B) improve the safety of the transportation system with respect to catastrophic—

''(i) natural disasters; or

''(ii) disasters caused by human activity; and

''(C) contribute to the economic vitality of the area in which the project is being carried out.

''(g) FEDERAL SHARE.—Amounts provided by the Delta Regional Authority to carry out a project under this section shall be applied to the non-Federal share required by section 120.

''(h) AVAILABILITY OF FUNDS.—Amounts made available to carry out this section shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter I of title 23, United States Code (as amended by section 1841 (b)), is amended by adding at the end the following:

''178. Delta Region Transportation Development Program.''.''

On page 677, line 11, strike ''$2,500,000,000'' and insert ''$1,300,000,000''.

On page 677, line 13, strike ''$2,000,000,000'' and insert ''$1,200,000,000''.

On page 677, line 15, strike ''$500,000,000'' and insert ''100,000,000''.

On page 678, after line 5, insert the following:

''(16) DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM.—For the Delta Region transportation development program, $400,000,000 for each of fiscal years 2004 through 2009.''

SA 2612. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

''(3) COST TO COMPLETE STUDY.—The Appalachian Regional Commission shall prepare an estimate of the cost to construct highways and access roads for the Appalachian development highway system every 24 months.''

SA 2613. Mr. SHELBY submitted an amendment intended to be proposed by him to the bill S. 1072, 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:

On page 521, strike line 18 and all that follows through the matter following line 18 on page 720, and insert the following:

TITLE III—PUBLIC TRANSPORTATION

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Federal Public Transportation Act of 2004''.

SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY.

(a) AMENDMENTS TO TITLE 49.—Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law,

the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) UPDATED TERMINOLOGY.—Except for sections 5301(f), 5302(a)(7), and 5315, chapter 53, including the chapter analysis, is amended by striking ''mass transportation'' each place it appears and inserting ''public transportation''.

SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.

(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—Section 5301(a) is amended to read as follows:

''(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the economic interest of the United States to foster the development and revitalization of public transportation systems, which are coordinated with other modes of transportation, that maximize the efficient, secure, and safe mobility of individuals and minimize environmental impacts.''.

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended—

(1) by striking ''70 percent'' and inserting ''two-thirds''; and

(2) by striking ''urban areas'' and inserting ''urbanized areas''.

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended—

(1) by striking ''an urban'' and inserting ''a''; and

(2) by striking ''under sections 5309 and 5310 of this title''.

(d) GENERAL PURPOSES.—Section 5301(f) is amended—

(1) in paragraph (1)—

(A) by striking ''improved mass'' and inserting ''improved public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(2) in paragraph (2)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(3) in paragraph (3)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public or private mass transportation companies'' and inserting ''public transportation companies or private companies engaged in public transportation''; and

(4) in paragraph (5), by striking ''urban mass'' and inserting ''public''.

SEC. 3004. DEFINITIONS.

Section 5302(a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G)(i), by inserting ''including the intercity bus and intercity rail portions of such facility or mall,'' after ''transportation mall,'';

(B) in subparagraph (G)(ii), by inserting '', except for the intercity bus portion of intermodal facilities or malls,'' after ''commercial revenue-producing facility'';

(C) in subparagraph (H)—

(i) by striking ''and'' after ''innovative'' and inserting ''or''; and

(ii) by striking ''or'' after the semicolon at the end;

(D) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

''(J) crime prevention and security, including—

''(i) projects to refine and develop security and emergency response plans; or

''(ii) projects to detect chemical or biological agents in public transportation;

''(K) conducting emergency response drills with public transportation agencies and local first response agencies or security training for public transportation employees, except for expenses relating to operations; or

''(L) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter.'';

(2) by striking paragraph (16);

(3) by redesignating paragraphs (8) through (15) as paragraphs (9) through (16), respectively;

(4) by striking paragraph (7) and inserting the following:

''(7) MASS TRANSPORTATION.—The term 'mass transportation' means public transportation.

''(8) MOBILITY MANAGEMENT.—The term 'mobility management' means a short-range planning or management activity or project that does not include operating public transportation services and—

''(A) improves coordination among public transportation providers, including private companies engaged in public transportation;

''(B) addresses customer needs by tailoring public transportation services to specific market niches; or

''(C) manages public transportation demand.'';

(5) by amending paragraph (11), as redesignated, to read as follows:

''(11) PUBLIC TRANSPORTATION.—The term 'public transportation' means transportation by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity bus or passenger rail, or sightseeing transportation.'';

(6) in subparagraphs (A) and (E) of paragraph (16), as redesignated, by striking ''and'' each place it appears and inserting ''or''; and

(7) by amending paragraph (17) to read as follows:

''(17) URBANIZED AREA.—The term 'urbanized area' means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.''.

SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.

Section 5303 is amended to read as follows:

''§ 5303. Metropolitan transportation planning

''(a) DEFINITIONS.—As used in this section and in section 5304, the following definitions shall apply:

''(1) CONSULTATION.—A 'consultation' occurs when 1 party—

''(A) confers with another identified party in accordance with an established process;

''(B) prior to taking action, considers the views of the other identified party; and

''(C) periodically informs that party about action taken.

''(2) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization and the Governor under subsection (d).

''(3) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the Policy Board of the organization designated under subsection (c).

''(4) NONMETROPOLITAN AREA.—The term 'nonmetropolitan area' means any geographic area outside all designated metropolitan planning areas.

''(5) NONMETROPOLITAN LOCAL OFFICIAL.—The term 'nonmetropolitan local official' means any elected or appointed official of general purpose local government located in a nonmetropolitan area who is responsible for transportation services for such local government.

''(b) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans and programs for metropolitan planning areas of the State in which it is located.

''(2) CONTENTS.—The plans and programs developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(4) PLANNING AND PROJECT DEVELOPMENT.—The metropolitan planning organization, the State Department of Transportation, and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements that address the most complex problems and pressing transportation needs in the metropolitan area.

''(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area—

''(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

''(B) in accordance with procedures established by applicable State or local law.

''(2) STRUCTURE.—Each metropolitan planning organization designated under paragraph (1) that serves an area identified as a transportation management area shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

''(C) appropriate State officials.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

''(A) to develop plans and programs for adoption by a metropolitan planning organization; and

''(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

''(4) CONTINUING DESIGNATION.—The designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

''(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor

and units of general purpose local government that combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

''(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

''(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

''(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

''(2) INCLUDED AREA.—Each metropolitan planning area—

''(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

''(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Office of Management and Budget.

''(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

''(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area in existence as of the date of enactment of the Federal Public Transportation Act of 2004 shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in accordance with paragraph (5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—If an urbanized area is designated after the date of enactment of this paragraph in a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in accordance with subsection (c)(1);

''(B) shall encompass the areas described in paragraph (2)(A);

''(C) may encompass the areas described in paragraph (2)(B); and

''(D) may address any nonattainment identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

''(e) COORDINATION IN MULTISTATE AREAS.—

''(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

''(2) INTERSTATE COMPACTS.—States are authorized—

''(A) to enter into agreements or compacts with other States, which agreements or compacts are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) LAKE TAHOE REGION.—

''(A) DEFINITION.—In this paragraph, the term 'Lake Tahoe region' has the meaning given the term 'region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

''(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

''(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

''(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5304.

''(C) INTERSTATE COMPACT.—

''(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (c), to carry out the transportation planning process required by this section, California and Nevada may designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governor of the State of California, the Governor of the State of Nevada, and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area), or in accordance with procedures established by applicable State or local law.

''(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

''(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

''(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of title 23 and this chapter, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

''(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

''(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

''(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.

''(f) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans required by this section.

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement funded from the highway trust fund is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans regarding the transportation improvement.

''(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single metropolitan planning area or State shall be coordinated directly with the affected, contiguous, metropolitan planning organizations and States.

''(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to coordinate its planning process, to the maximum extent practicable, with those officials responsible for other types of planning activities that are affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, housing, and freight.

''(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans with due consideration of, and in coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under this chapter;

''(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(iii) recipients of assistance under section 204 of title 23.

''(g) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The goals and objectives developed through the metropolitan planning process for a metropolitan planning area under this section shall address, in relation to the performance of the metropolitan area transportation systems—

''(A) supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency, including through services provided by public and private operators;

''(B) increasing the safety of the transportation system for motorized and nonmotorized users;

''(C) increasing the security of the transportation system for motorized and nonmotorized users;

''(D) increasing the accessibility and mobility of people and for freight, including through services provided by public and private operators;

''(E) protecting and enhancing the environment (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promoting energy conservation, and promoting consistency between transportation improvements and State and local land use planning and economic development patterns (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the metropolitan area);

''(F) enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight, including through services provided by public and private operators;

''(G) promoting efficient system management and operation; and

''(H) emphasizing the preservation and efficient use of the existing transportation system, including services provided by public and private operators.

''(2) SELECTION OF FACTORS.—After soliciting and considering any relevant public

comments, the metropolitan planning organization shall determine which of the factors described in paragraph (1) are most appropriate to consider.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

''(h) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Each metropolitan planning organization shall develop a transportation plan for its metropolitan planning area in accordance with this subsection, and update such plan—

''(i) not less frequently than once every 4 years in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in areas that were nonattainment that have been redesignated as attainment, in accordance with paragraph (3) of such section, with a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a); or

''(ii) not less frequently than once every 5 years in areas designated as attainment, as defined in section 107(d) of the Clean Air Act.

''(B) COORDINATION FACTORS.—In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast period.

''(C) FINANCIAL ESTIMATES.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(2) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(3) CONTENTS.—A transportation plan under this subsection shall be in a form that the Secretary determines to be appropriate and shall contain—

''(A) an identification of transportation facilities, including major roadways, transit, multimodal and intermodal facilities, intermodal connectors, and other relevant facilities identified by the metropolitan planning organization, which should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

''(B) a financial plan that—

''(i) demonstrates how the adopted transportation plan can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

''(C) operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

''(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs; and

''(E) proposed transportation and transit enhancement activities.

''(4) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

''(B) ISSUES.—The consultation shall involve—

''(i) comparison of transportation plans with State conservation plans or with maps, if available;

''(ii) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(iii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

''(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

''(6) APPROVAL OF THE TRANSPORTATION PLAN.—Each transportation plan prepared by a metropolitan planning organization shall be—

''(A) approved by the metropolitan planning organization; and

''(B) submitted to the Governor for information purposes at such time and in such manner as the Secretary may reasonably require.

''(i) PARTICIPATION BY INTERESTED PARTIES.—

''(1) DEVELOPMENT OF PARTICIPATION PLAN.—Not less frequently than every 4 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan and programs by—

''(A) citizens;

''(B) affected public agencies;

''(C) representatives of public transportation employees;

''(D) freight shippers;

''(E) providers of freight transportation services;

''(F) private providers of transportation;

''(G) representatives of users of public transit;

''(H) representatives of users of pedestrian walkways and bicycle transportation facilities; and

''(I) other interested parties.

''(2) CONTENTS OF PARTICIPATION PLAN.—The participation plan—

''(A) shall be developed in a manner the Secretary determines to be appropriate;

''(B) shall be developed in consultation with all interested parties; and

''(C) shall provide that all interested parties have reasonable opportunities to comment on—

''(i) the process for developing the transportation plan; and

''(ii) the contents of the transportation plan.

''(3) METHODS.—The participation plan shall provide that the metropolitan planning organization shall, to the maximum extent practicable—

''(A) hold any public meetings at convenient and accessible locations and times;

''(B) employ visualization techniques to describe plans; and

''(C) make public information available in electronically accessible format and means, such as the World Wide Web.

''(4) CERTIFICATION.—Before the metropolitan planning organizations approve a transportation plan or program, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

''(j) TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT AND UPDATE.—

''(A) IN GENERAL.—In cooperation with the State and affected operators of public transportation, a metropolitan planning organization designated for a metropolitan planning area shall develop a transportation improvement program for the area.

''(B) PARTICIPATION.—In developing the transportation improvement program, the metropolitan planning organization, in cooperation with the Governor and any affected operator of public transportation, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i).

''(C) UPDATES.—The transportation improvement program shall be updated not less than once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

''(D) FUNDING ESTIMATE.—In developing the transportation improvement program, the metropolitan planning organization, operators of public transportation, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

''(E) PROJECT ADVANCEMENT.—Projects listed in the transportation improvement program may be selected for advancement consistent with the project selection requirements.

''(F) MAJOR AMENDMENTS.—Major amendments to the list described in subparagraph (E), including the addition, deletion, or concept and scope change of a regionally significant project, may not be advanced without—

''(i) appropriate public involvement;

''(ii) financial planning;

''(iii) transportation conformity analyses; and

''(iv) a finding by the Federal Highway Administration and Federal Transit Administration that the amended plan was produced in a manner consistent with this section.

''(2) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER CHAPTER 1 OF TITLE 23 AND THIS CHAPTER.—A transportation improvement program developed under this section for a metropolitan area shall include the projects and strategies within the metropolitan area that are proposed for funding under chapter 1 of title 23 and this chapter.

''(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the metropolitan transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not regionally significant shall be grouped in 1 line item or identified individually in the metropolitan transportation improvement program.

''(3) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Except as otherwise provided under subsection (k)(4), the selection of federally funded projects in metropolitan planning areas shall be carried out, from the approved transportation plan—

''(i) by the State, in the case of projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5317 of this title;

''(ii) by the designated recipient, in the case of projects under section 5307; and

''(iii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project may be advanced from the transportation improvement program in place of another project in the same transportation improvement program without the approval of the Secretary.

''(4) PUBLICATION REQUIREMENTS.—

''(A) PUBLICATION OF TRANSPORTATION IMPROVEMENT PROGRAM.—A transportation improvement program involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including, to the maximum extent practicable, in electronically accessible formats and means, such as the World Wide Web.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding 4 years shall be published or otherwise made available for public review by the cooperative effort of the State, transit operator, and the metropolitan planning organization. This listing shall be consistent with the funding categories identified in the transportation improvement program.

''(C) RULEMAKING.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations specifying—

''(i) the types of data to be included in the list described in subparagraph (B), including—

''(I) the name, type, purpose, and geocoded location of each project;

''(II) the Federal, State, and local identification numbers assigned to each project;

''(III) amounts obligated and expended on each project, sorted by funding source and transportation mode, and the date on which each obligation was made; and

''(IV) the status of each project; and

''(ii) the media through which the list described in subparagraph (B) will be made available to the public, including written and visual components for each of the projects listed.

''(k) TRANSPORTATION MANAGEMENT AREAS.—

''(1) REQUIRED IDENTIFICATION.—The Secretary shall identify each urbanized area with a population of more than 200,000 individuals as a transportation management area.

''(2) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and programs for a metropolitan planning area serving a transportation management area shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

''(3) CONGESTION MANAGEMENT SYSTEM.—

''(A) IN GENERAL.—The transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and this chapter through the use of travel demand reduction and operational management strategies.

''(B) PHASE-IN SCHEDULE.—The Secretary shall establish a phase-in schedule that provides for full compliance with the requirements of this section not later than 1 year after the identification of transportation management areas under paragraph (1).

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (except for projects carried out on the National Highway System and projects carried out under the bridge program or the interstate maintenance program) or under this chapter shall be selected for implementation from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area and projects carried out within such boundaries under the bridge program or the interstate maintenance program under title 23 shall be selected for implementation from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

''(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with Federal law; and

''(ii) subject to subparagraph (B), certify, not less frequently than once every 4 years in nonattainment and maintenance areas (as defined under the Clean Air Act) and not less frequently than once every 5 years in attainment areas (as defined under such Act), that the requirements of this paragraph are met with respect to the metropolitan planning process.

''(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

''(i) the transportation planning process complies with the requirements of this section and all other applicable Federal law; and

''(ii) a transportation plan and a transportation improvement program for the metropolitan planning area have been approved by the metropolitan planning organization and the Governor.

''(C) PENALTY FOR FAILING TO CERTIFY.—

''(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

''(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

''(D) REVIEW OF CERTIFICATION.—In making a certification under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

''(*l*) ABBREVIATED PLANS FOR CERTAIN AREAS.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and transportation improvement program for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(m) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of title 23 or this chapter, Federal funds may not be advanced for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

''(2) APPLICABILITY.—This subsection applies to any nonattainment area within the metropolitan planning area boundaries determined under subsection (d).

''(n) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project that is not eligible under title 23 or this chapter.

''(o) AVAILABILITY OF FUNDS.—Funds set aside under section 104(f) of title 23 or section 5308 of this title shall be available to carry out this section.

''(p) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.

Section 5304 is amended to read as follows:

''§ 5304. Statewide transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To support the policies described in section 5301(a), each State shall develop a statewide transportation plan (referred to in this section as a ''Plan'') and a statewide transportation improvement program (referred to in this section as a ''Program'') for all areas of the State subject to section 5303.

''(2) CONTENTS.—The Plan and the Program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the Plan and the Program shall—

''(A) provide for the consideration of all modes of transportation and the policies described in section 5301(a); and

''(B) be continuing, cooperative, and comprehensive to the degree appropriate, based

on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—Each State shall—

''(1) coordinate planning under this section with—

''(A) the transportation planning activities under section 5303 for metropolitan areas of the State; and

''(B) other related statewide planning activities, including trade and economic development and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan, as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—States may enter into agreements or compacts with other States for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(d) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for the consideration of projects, strategies, and implementing projects and services that will—

''(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of people and freight;

''(E) protect and enhance the environment (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promote energy conservation, promote consistency between transportation improvements and State and local land use planning and economic development patterns, and improve the quality of life (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the State);

''(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation and efficient use of the existing transportation system.

''(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the State shall determine which of the projects and strategies described in paragraph (1) are most appropriate.

''(3) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(4) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor described in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a Program, a project or strategy, or the certification of a planning process.

''(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider—

''(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

''(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) coordination of Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—Each State shall develop a Plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—The Plan shall be developed for each metropolitan planning area in the State in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The Plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

''(I) land use management;

''(II) natural resources;

''(III) environmental protection;

''(IV) conservation; and

''(V) historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve—

''(I) comparison of transportation plans to State conservation plans or maps, if available;

''(II) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(III) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

''(A) provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed Plan; and

''(B) to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web.

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A Plan shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(5) TRANSPORTATION STRATEGIES.—A Plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people.

''(6) FINANCIAL PLAN.—The Plan may include a financial plan that—

''(A) demonstrates how the adopted Plan can be implemented;

''(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

''(C) recommends any additional financing strategies for needed projects and programs; and

''(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

''(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects described in paragraph (6)(D).

''(8) EXISTING SYSTEM.—The Plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each Plan prepared by a State shall be published or otherwise made available, including, to the maximum extent practicable, in electronically accessible formats and means, such as the World Wide Web.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—Each State shall develop a Program for all areas of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—With respect to each metropolitan planning area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the Program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested parties with a reasonable opportunity to comment on the proposed Program.

''(4) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A Program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—

''(i) IN GENERAL.—The Program shall cover a minimum of 4 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 4 years.

''(ii) PUBLICATION.—An annual listing of projects for which funds have been obligated in the preceding 4 years in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

''(C) INDIVIDUAL IDENTIFICATION.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project included in the list described in subparagraph (B) shall be—

''(i) consistent with the Plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in each year of the approved metropolitan transportation improvement program; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The Program shall not include a project, or an identified phase of a project, unless full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—The Program may include a financial plan that—

''(i) demonstrates how the approved Program can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects described in subparagraph (F)(iv).

''(ii) REQUIRED APPROVAL BY THE SECRETARY.—A State shall not include any project from the illustrative list of additional projects described in subparagraph (F)(iv) in an approved Program without the approval of the Secretary.

''(H) PRIORITIES.—The Program shall reflect the priorities for programming and expenditures of funds, including transportation and transit enhancement activities, required by title 23 and this chapter, and transportation control measures included in the State's air quality implementation plan.

''(5) PROJECT SELECTION FOR AREAS WITH FEWER THAN 50,000 INDIVIDUALS.—

''(A) IN GENERAL.—Each State, in cooperation with the affected nonmetropolitan local officials with responsibility for transportation, shall select projects to be carried out in areas with fewer than 50,000 individuals from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the interstate maintenance program under title 23 or sections 5310 and 5311 of this title).

''(B) CERTAIN PROGRAMS.—Each State, in consultation with the affected nonmetropolitan local officials with responsibility for transportation, shall select, from the approved Program, projects to be carried out in areas with fewer than 50,000 individuals under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this title.

''(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 4 years.

''(7) PLANNING FINDING.—Not less frequently than once every 4 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed are consistent with this section and section 5303.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project included in the approved Program may be advanced in place of another project in the program without the approval of the Secretary.

''(h) FUNDING.—Funds set aside pursuant to section 104(i) of title 23 and 5308 of this title shall be available to carry out this section.

''(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section and section 5303, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management system under section 5303(i)(3) if the Secretary determines that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of section 5303.

''(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary under this section, regarding a metropolitan or statewide transportation plan or the Program, shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 3007. TRANSPORTATION MANAGEMENT AREAS.

Section 5305 is repealed.

SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.

Section 5306 is amended—

(1) in subsection (a)—

(A) by striking ''5305 of this title'' and inserting ''5308''; and

(B) by inserting '', as determined by local policies, criteria, and decision making,'' after ''feasible'';

(2) in subsection (b) by striking ''5303–5305 of this title'' and inserting ''5303, 5304, and 5308''; and

(3) by adding at the end the following:

''(c) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations describing how the requirements under this chapter relating to subsection (a) shall be enforced.

SEC. 3009. URBANIZED AREA FORMULA GRANTS.

(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

(1) by striking subsections (h), (j) and (k); and

(2) by redesignating subsections (i), (*l*), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

(b) DEFINITIONS.—Section 5307(a) is amended—

(1) by amending paragraph (2)(A) to read as follows:

''(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under sections 5336 and 5337 that are attributable to transportation management areas designated under section 5303; or''; and

(2) by adding at the end the following:

''(3) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that may receive a Federal transit program grant indirectly through a recipient, rather than directly from the Federal Government.''.

(c) GENERAL AUTHORITY.—Section 5307(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary of Transportation may award grants under this section for—

''(A) capital projects, including associated capital maintenance items;

''(B) planning, including mobility management;

''(C) transit enhancements;

''(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000; and

''(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

''(i) the urbanized area includes parts of more than 1 State;

''(ii) the portion of the urbanized area includes only 1 State;

''(iii) the population of the portion of the urbanized area is less than 30,000; and

''(iv) the grants will not be used to provide public transportation outside of the portion of the urbanized area.'';

(2) by amending paragraph (2) to read as follows:

''(2) SPECIAL RULE FOR FISCAL YEARS 2004 THROUGH 2006—

''(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 2004 through 2006, 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 YEAR 2004.—In fiscal year 2004—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 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 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 the amount the portion of the area received under section 5311 for fiscal year 2002.

''(C) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

''(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.

''(D) MAXIMUM AMOUNTS IN FISCAL YEAR 2006.—In fiscal year 2006—

''(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

(3) by striking paragraph (4).

(d) PUBLIC PARTICIPATION REQUIREMENTS.—Section 5307(c)(5) is amended by striking ''section 5336'' and inserting ''sections 5336 and 5337''.

(e) GRANT RECIPIENT REQUIREMENTS.—Section 5307(d)(1) is amended—

(1) in subparagraph (A), by inserting '', including safety and security aspects of the program'' after ''program'';

(2) in subparagraph (E), by striking ''section'' and all that follows and inserting ''section, the recipient will comply with sections 5323 and 5325;'';

(3) in subparagraph (H), by striking ''sections 5301(a) and (d), 5303-5306, and 5310(a)-(d) of this title'' and inserting ''subsections (a) and (d) of section 5301 and sections 5303 through 5306'';

(4) in subparagraph (I) by striking ''and'' at the end;

(5) in subparagraph (J), by striking the period at the end and inserting ''; and''; and

(6) by adding at the end the following:

''(K) if located in an urbanized area with a population of at least 200,000, will expend not less than 1 percent of the amount the recipient receives each fiscal year under this section for transit enhancement activities described in section 5302(a)(15).''.

(f) GOVERNMENT'S SHARE OF COSTS.—Section 5307(e) is amended—

(1) by striking the first sentence and inserting the following:

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall cover 80 percent of the net project cost.'';

(2) by striking ''A grant for operating expenses'' and inserting the following:

''(2) OPERATING EXPENSES.—A grant for operating expenses'';

(3) by striking the fourth sentence and inserting the following:

''(3) REMAINING COSTS.—The remainder of the net project cost shall be provided in cash from non-Federal sources or revenues derived from the sale of advertising and concessions and amounts received under a service agreement with a State or local social service agency or a private social service organization.''; and

(4) by adding at the end the following: ''The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to the remainder.''.

(g) UNDERTAKING PROJECTS IN ADVANCE.—Section 5307(g) is amended by striking paragraph (4).

(h) RELATIONSHIP TO OTHER LAWS.—Section 5307(k), as redesignated, is amended to read as follows:

''(k) RELATIONSHIP TO OTHER LAWS.—

''(1) APPLICABLE PROVISIONS.—Sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333 and 5335 apply to this section and to any grant made under this section.

''(2) INAPPLICABLE PROVISIONS.—

''(A) IN GENERAL.—Except as provided under this section, no other provision of this chapter applies to this section or to a grant made under this section.

''(B) TITLE 5.—The provision of assistance under this chapter shall not be construed as bringing within the application of chapter 15 of title 5, any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to which such chapter is otherwise inapplicable.''.

SEC. 3010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

''§ 5308. Planning programs

''(a) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, make agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities to—

''(1) develop transportation plans and programs;

''(2) plan, engineer, design, and evaluate a public transportation project; or

''(3) conduct technical studies relating to public transportation, including—

''(A) studies related to management, planning, operations, capital requirements, and economic feasibility;

''(B) evaluations of previously financed projects;

''(C) peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners; and

''(D) other similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of facilities and equipment.

''(b) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

''(c) METROPOLITAN PLANNING PROGRAM.—

''(1) ALLOCATIONS TO STATES.—

''(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(3)(A) to States to carry out sections 5303 and 5306 in a ratio equal to the population in urbanized areas in each State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

''(B) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the total amount allocated under this paragraph.

''(2) AVAILABILITY OF FUNDS.—A State receiving an allocation under paragraph (1) shall promptly distribute such funds to metropolitan planning organizations in the State under a formula—

''(A) developed by the State in cooperation with the metropolitan planning organizations;

''(B) approved by the Secretary of Transportation;

''(C) that considers population in urbanized areas; and

''(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

''(3) SUPPLEMENTAL ALLOCATIONS.—

''(A) IN GENERAL.—The Secretary shall allocate 20 percent of the amount made available under subsection (g)(3)(A) to States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

''(B) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303, 5304, and 5306.

''(d) STATE PLANNING AND RESEARCH PROGRAM.—

''(1) IN GENERAL.—The Secretary shall allocate amounts made available pursuant to subsection (g)(3)(B) to States for grants and contracts to carry out sections 5304, 5306, 5315, and 5322 so that each State receives an

amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census.

''(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated under this subsection.

''(3) REALLOCATION.—A State may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (c).

''(e) PLANNING CAPACITY BUILDING PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the ''Program'') to support and fund innovative practices and enhancements in transportation planning.

''(2) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5303 and 5304.

''(3) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

''(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

''(ii) to conduct research, disseminate information, and provide technical assistance.

''(B) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in subparagraph (A), the Secretary may—

''(i) expend appropriated funds directly; or

''(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local governmental authority, association, nonprofit or for-profit entity, or institution of higher education.

''(f) GOVERNMENT'S SHARE OF COSTS.—Amounts made available to carry out subsections (c), (d), and (e) may not exceed 80 percent of the costs of the activity unless the Secretary of Transportation determines that it is in the interest of the Government not to require State or local matching funds.

''(g) ALLOCATION OF FUNDS.—Of the amounts made available under section 5338(b)(2)(B) for fiscal year 2005 and each fiscal year thereafter to carry out this section—

''(1) $5,000,000 shall be allocated for the Planning Capacity Building Program established under subsection (e);

''(2) $20,000,000 shall be allocated for grants under subsection (a)(2) for alternatives analyses required by section 5309(e)(2)(A); and

''(3) of the remaining amount—

''(A) 82.72 percent shall be allocated for the metropolitan planning program described in subsection (d); and

''(B) 17.28 percent shall be allocated to carry out subsection (b).

''(h) REALLOCATIONS.—Any amount allocated under this section that has not been used 3 years after the end of the fiscal year in which the amount was allocated shall be reallocated among the States.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5308 in the table of sections for chapter 53 is amended to read as follows:

''5308. Planning programs.''.

SEC. 3011. CAPITAL INVESTMENT PROGRAM.

(a) SECTION HEADING.—The section heading of section 5309 is amended to read as follows:

''§ 5309. Capital investment grants''.

(b) GENERAL AUTHORITY.—Section 5309(a) is amended—

(1) in paragraph (1)—

(A) by striking ''(1) The Secretary of Transportation may make grants and loans'' and inserting the following:

''(1) GRANTS AUTHORIZED.—The Secretary may award grants'';

(B) in subparagraph (A), by striking ''alternatives analysis related to the development of systems,'';

(C) by striking subparagraphs (B), (C), (D), and (G);

(D) by redesignating subparagraphs (E), (F), and (H) as subparagraphs (B), (C), and (D), respectively;

(E) in subparagraph (C), as redesignated, by striking the semicolon at the end and inserting '', including programs of bus and bus-related projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and''; and

(F) in subparagraph (D), as redesignated—

(i) by striking ''to support fixed guideway systems''; and

(ii) by striking ''dedicated bus and high occupancy vehicle'';

(2) by amending paragraph (2) to read as follows:

''(2) GRANTEE REQUIREMENTS.—

''(A) GRANTEE IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or subrecipient located in an urbanized area shall be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

''(B) GRANTEE NOT IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or subrecipient not located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions as a recipient or subrecipient of assistance under section 5311.

''(C) SUBRECIPIENT.—The Secretary shall require that any private, nonprofit organization that is a subrecipient of a grant awarded under this section shall be subject to the same terms, conditions, requirements, and provisions as a subrecipient of assistance under section 5310.

''(D) STATEWIDE TRANSIT PROVIDER GRANTEES.—A statewide transit provider that receives a grant under this section shall be subject to the terms, conditions, requirements, and provisions of this section or section 5311, consistent with the scope and purpose of the grant and the location of the project.''; and

(3) by adding at the end the following:

''(3) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the findings required under this subsection.''.

(c) DEFINED TERM.—Section 5309(b) is amended to read as follows:

''(b) DEFINED TERM.—As used in this section, the term 'alternatives analysis' means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

''(1) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

''(2) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

''(3) the selection of a locally preferred alternative; and

''(4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.''.

(d) GRANT REQUIREMENTS.—Section 5309(d) is amended to read as follows:

''(d) GRANT REQUIREMENTS.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

''(1) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

''(2) the applicant has, or will have—

''(A) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

''(B) satisfactory continuing control over the use of the equipment or facilities; and

''(C) the capability and willingness to maintain the equipment or facilities.''.

(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—Section 5309(e) is amended to read as follows:

''(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—

''(1) FULL FUNDING GRANT AGREEMENT.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving not less than $75,000,000 under this subsection for a new fixed guideway capital project that—

''(A) is authorized for final design and construction; and

''(B) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).

''(2) DETERMINATIONS.—The Secretary may not award a grant under this subsection for a new fixed guideway capital project unless the Secretary determines that the proposed project is—

''(A) based on the results of an alternatives analysis and preliminary engineering;

''(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use patterns and policies; and

''(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct the project, and maintain and operate the entire public transportation system, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(3) EVALUATION OF PROJECT JUSTIFICATION.—In making the determinations under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—

''(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

''(B) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(C) the direct and indirect costs of relevant alternatives;

''(D) factors such as—

''(i) congestion relief;

''(ii) improved mobility;

''(iii) air pollution;

''(iv) noise pollution;

''(v) energy consumption; and

''(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

''(E) reductions in local infrastructure costs achieved through compact land use development and positive impacts on the capacity, utilization, or longevity of other surface transportation assets and facilities;

''(F) the cost of suburban sprawl;

''(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

''(H) population density and current transit ridership in the transportation corridor;

''(I) the technical capability of the grant recipient to construct the project;

''(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

''(K) other factors that the Secretary determines to be appropriate to carry out this chapter.

''(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

''(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

''(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

''(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

''(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

''(i) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(ii) existing grant commitments;

''(iii) the degree to which financing sources are dedicated to the proposed purposes;

''(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

''(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project, provided that if the Secretary gives priority to financing projects that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

''(5) PROJECT ADVANCEMENT AND RATINGS.—

''(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

''(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by regulation.

''(6) APPLICABILITY.—This subsection shall not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2004.

''(7) RULEMAKING.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations on the manner by which the Secretary shall evaluate and rate projects based on the results of alternatives analysis, project justification, and local financial commitment, in accordance with this subsection.

''(8) POLICY GUIDANCE.—

''(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process—

''(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004; and

''(ii) each time significant changes are made by the Secretary to the new starts project review and evaluation process and criteria, but not less frequently than once every 2 years.

''(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

''(i) invite public comment to the policy guidance published under subparagraph (A); and

''(ii) publish a response to the comments received under clause (i).''.

(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.— Section 5309(f) is amended to read as follows:

''(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.—

''(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—

''(A) IN GENERAL.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than $75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

''(i) is authorized by law; and

''(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (3)(B).

''(B) CONTENTS.—

''(i) IN GENERAL.—An agreement under this paragraph shall specify—

''(I) the scope of the project to be constructed;

''(II) the estimated net cost of the project;

''(III) the schedule under which the project shall be constructed;

''(IV) the maximum amount of funding to be obtained under this subsection;

''(V) the proposed schedule for obligation of future Federal grants; and

''(VI) the sources of non-Federal funding.

''(ii) ADDITIONAL FUNDING.—The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

''(C) FULL FUNDING GRANT AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

''(2) SELECTION PROCESS.—

''(A) SELECTION CRITERIA.—The Secretary may not award a grant under this subsection for a proposed project unless the Secretary determines that the project is—

''(i) based on the results of planning and alternatives analysis;

''(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

''(iii) supported by an acceptable degree of local financial commitment.

''(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph (A)(i), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

''(C) PROJECT JUSTIFICATION.—In making the determinations under subparagraph (A)(ii), the Secretary shall—

''(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local developmental goals;

''(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service;

''(iii) determine the degree to which the project will have a positive effect on local economic development;

''(iv) consider the reliability of the forecasts of costs and ridership associated with the project; and

''(v) consider other factors that the Secretary determines to be appropriate to carry out this subsection.

''(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(iii), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

''(3) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

''(A) IN GENERAL.—A proposed project under this subsection may not advance from the planning and alternatives analysis stage to project development and construction unless—

''(i) the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements; and

''(ii) the metropolitan planning organization has adopted the locally preferred alternative for the project into the long-range transportation plan.

''(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall evaluate and rate the project as high, medium-high, medium, medium-low, or low, based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required under this subsection.

''(4) IMPACT REPORT.—

''(A) IN GENERAL.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Federal Transit Administration shall submit a report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway projects to—

''(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

''(5) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.''.

(g) FULL FUNDING GRANT AGREEMENTS.— Section 5309(g)(2) is amended by adding at the end the following:

''(C) BEFORE AND AFTER STUDY.—

''(i) IN GENERAL.—Each full funding grant agreement shall require the applicant to conduct a study that—

''(I) describes and analyzes the impacts of the new start project on transit services and transit ridership;

''(II) evaluates the consistency of predicted and actual project characteristics and performance; and

''(III) identifies sources of differences between predicted and actual outcomes.

''(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

''(I) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement shall submit a complete plan for the collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

''(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

''(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

''(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

''(cc) collection of data on the transit system 2 years after the opening of the new start project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the new start project; and

''(dd) analysis of the consistency of predicted project characteristics with the after data.

''(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement, recipients shall have collected data on the current system, according to the plan required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

''(E) PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM.—

''(i) AUTHORIZATION.—The Secretary may establish a pilot program to demonstrate the advantages of public-private partnerships for certain fixed guideway systems development projects.

''(ii) IDENTIFICATION OF QUALIFIED PROJECTS.—The Secretary shall identify qualified public-private partnership projects as permitted by applicable State and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.''.

(h) FEDERAL SHARE OF NET PROJECT COST.—Section 5309(h) is amended to read as follows:

''(h) FEDERAL SHARE OF ADJUSTED NET PROJECT COST.—

''(1) IN GENERAL.—The Secretary shall estimate the net project cost based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities.

''(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a major capital investment project evaluated under subsections (e) and (f) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

''(3) MAXIMUM FEDERAL SHARE.—

''(A) IN GENERAL.—A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2), unless the grant recipient requests a lower grant percentage.

''(B) EXCEPTIONS.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

''(i) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

''(ii) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

''(4) OTHER SOURCES.—The costs not funded by a grant under this section may be funded from—

''(A) an undistributed cash surplus;

''(B) a replacement or depreciation cash fund or reserve; or

''(C) new capital, including any Federal funds that are eligible to be expended for transportation.

''(5) PLANNED EXTENSION TO FIXED GUIDEWAY SYSTEM.—In addition to amounts allowed under paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the Secretary determines that only non-Federal funds were used and that the purchase was made for use on the extension. A refund or reduction of the costs not funded by a grant under this section may be made only if a refund of a proportional amount of the grant is made at the same time.

''(6) EXCEPTION.—The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to amounts allowed under paragraph (4).''.

(i) LOAN PROVISIONS AND FISCAL CAPACITY CONSIDERATIONS.—Section 5309 is amended—

(1) by striking subsections (i), (j), (k), and (*l*);

(2) by redesignating subsections (m) and (n) as subsections (i) and (j), respectively;

(3) by striking subsection (o) (as added by section 3009(i) of the Federal Transit Act of 1998); and

(4) by redesignating subsections (o) and (p) as subsections (k) and (*l*), respectively.

(j) ALLOCATING AMOUNTS.—Section 5309(i), as redesignated, is amended to read as follows:

''(i) ALLOCATING AMOUNTS.—

''(1) FISCAL YEAR 2004.—Of the amounts made available or appropriated for fiscal year 2004 under section 5338(a)(3)—

''(A) $1,315,983,615 shall be allocated for projects of not less than $75,000,000 for major capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and projects for new fixed guideway or corridor improvement capital projects under subsection (f);

''(B) $1,199,387,615 shall be allocated for capital projects for fixed guideway modernization; and

''(C) $603,617,520 shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(2) IN GENERAL.—Of the amounts made available or appropriated for fiscal year 2005 and each fiscal year thereafter for grants under this section pursuant to subsections (b)(4) and (c) of section 5338—

''(A) the amounts appropriated under section 5338(c) shall be allocated for major capital projects for—

''(i) new fixed guideway systems and extensions of not less than $75,000,000, in accordance with subsection (e); and

''(ii) projects for new fixed guideway or corridor improvement capital projects, in accordance with subsection (f); and

''(B) the amounts made available under section 5338(b)(4) shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(K) for fiscal year 2005 and each fiscal year thereafter shall be allocated in accordance with section 5337.

''(4) PRELIMINARY ENGINEERING.—Not more that 8 percent of the allocation described in paragraphs (1)(A) and (2)(A) may be expended on preliminary engineering.

''(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A), $10,400,000 shall be available in each of the fiscal years 2004 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.

''(6) BUS AND BUS FACILITY GRANTS.—

''(A) CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

''(B) PROJECTS NOT IN URBANIZED AREAS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

''(C) INTERMODAL TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than $75,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.''.

(k) REPORTS.—Section 5309 is amended by inserting at the end the following:

''(m) REPORTS.—

''(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

''(A) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

''(i) a proposal on the allocation of amounts to finance grants for capital investment projects among grant applicants;

''(ii) a recommendation of projects to be funded based on—

''(I) the evaluations and ratings determined under subsection (e) and (f); and

''(II) existing commitments and anticipated funding levels for the subsequent 3 fiscal years; and

''(iii) detailed ratings and evaluations on each project recommended for funding.

''(2) TRIENNIAL REPORTS ON PROJECT RATINGS.—

''(A) IN GENERAL.—Not later than the first Monday of February, the first Monday of June, and the first Monday of October of each year, the Secretary shall submit a report on project ratings to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

''(i) a summary of the ratings of all capital investment projects for which funding was requested under this section;

''(ii) detailed ratings and evaluations on the project of each applicant that had significant changes to the finance or project proposal or has completed alternatives analysis or preliminary engineering since the date of the latest report; and

''(iii) all relevant information supporting the evaluation and rating of each updated project, including a summary of the financial plan of each updated project.

''(3) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

''(A) the Committee on Transportation and Infrastructure of the House of Representatives;

''(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(C) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(D) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(4) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

''(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, and each year thereafter, the Secretary shall submit a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—

''(i) estimates made at the time projects are approved for entrance into final design;

''(ii) costs and ridership when the project commences revenue operation; and

''(iii) costs and ridership when the project has been in operation for 2 years.

''(5) ANNUAL GENERAL ACCOUNTING OFFICE REVIEW.—

''(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary's implementation of such processes and procedures.

''(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (1), the Comptroller General shall submit a report to Congress that summarizes the results of the review conducted under subparagraph (A).

''(6) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report to the committees and subcommittees listed under paragraph (3) on the suitability of allowing contractors to public transportation agencies that undertake major capital investments under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.''.

(*l*) RESTRICTIONS ON USE OF BUS CATEGORY FUNDS FOR FIXED GUIDEWAY PROJECTS.—

(1) IN GENERAL.—Funds provided to grantees under the bus and bus facility category for fixed guideway ferry and gondola projects in the Department of Transportation and Related Agencies Appropriations Acts for any of fiscal years 1998 through 2004, or accompanying committee reports, that remain available and unobligated may be used for fixed guideway projects under section 5309 of title 49, United States Code.

(2) NEW FUNDS.—Grantees who received funds under paragraph (1) may use new Federal transit assistance provided under the bus and bus facility category for fixed guideway projects under such section 5309.

SEC. 3012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

(a) IN GENERAL.—Section 5310 is amended to read as follows:

''§ 5310. New freedom for elderly persons and persons with disabilities

''(a) GENERAL AUTHORITY.—

''(1) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

''(2) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

''(3) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts received under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(b) ALLOTMENTS AMONG STATES.—

''(1) IN GENERAL.—From amounts made available or appropriated in each fiscal year under subsections (a)(1)(C)(iv) and (b)(2)(D) of section 5338 for grants under this section, the Secretary shall allot amounts to each State under a formula based on the number of elderly individuals and individuals with disabilities in each State.

''(2) TRANSFER OF FUNDS.—Any funds allotted to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

''(3) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

''(A) a private nonprofit organization;

''(B) a public transportation agency or authority; or

''(C) a governmental authority that—

''(i) has been approved by the State to coordinate services for elderly individuals and individuals with disabilities;

''(ii) certifies that nonprofit organizations are not readily available in the area that can provide the services described under this subsection; or

''(iii) will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

''(c) FEDERAL SHARE.—

''(1) MAXIMUM.—

''(A) IN GENERAL.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(d) of title 23 shall receive an increased Federal share in accordance with the formula under that section.

''(2) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section—

''(A) may be funded from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

''(B) may be derived from amounts appropriated to or made available to any Federal agency (other than the Department of Transportation, except for Federal Lands Highway funds) that are eligible to be expended for transportation.

''(3) EXCEPTION.—For purposes of paragraph (2), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(d) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant recipient under this section shall be subject to the requirements of a grant recipient under section 5307 to the extent the Secretary determines to be appropriate.

''(2) CERTIFICATION REQUIREMENTS.—

''(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

''(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this section shall certify that—

''(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

''(C) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

''(e) STATE PROGRAM OF PROJECTS.—

''(1) SUBMISSION TO SECRETARY.—Each State shall annually submit a program of transportation projects to the Secretary for approval with an assurance that the program provides for maximum feasible coordination between transportation services funded under this section and transportation services assisted by other Federal sources.

''(2) USE OF FUNDS.—Each State may use amounts made available to carry out this section to provide transportation services for elderly individuals and individuals with disabilities if such services are included in an approved State program of projects.

''(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the needs of elderly individuals and individuals with disabilities.

''(g) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

''(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

''(i) FARES NOT REQUIRED.—This section does not require that elderly individuals and

individuals with disabilities be charged a fare.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5310 in the table of sections for chapter 53 is amended to read as follows:

''5310. New freedom for elderly persons and persons with disabilities.''.

SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

(a) DEFINITIONS.—Section 5311(a) is amended to read as follows:

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.''.

(b) GENERAL AUTHORITY.—Section 5311(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) GRANTS AUTHORIZED.—Except as provided under paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

''(A) public transportation capital projects;

''(B) operating costs of equipment and facilities for use in public transportation; and

''(C) the acquisition of public transportation services.'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

''(2) STATE PROGRAM.—

''(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

''(B) SUBMISSION TO SECRETARY.—Each State shall annually submit the program described in subparagraph (A) to the Secretary.

''(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

''(i) the program provides a fair distribution of amounts in the State; and

''(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources.'';

(4) in paragraph (3), as redesignated—

(A) by striking ''(3) The Secretary of Transportation'' and inserting the following:

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary'';

(B) by striking ''make'' and inserting ''use not more than 2 percent of the amount made available to carry out this section to award''; and

(C) by adding at the end the following:

''(B) DATA COLLECTION.—

''(i) REPORT.—Each grantee under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(I) total annual revenue;

''(II) sources of revenue;

''(III) total annual operating costs;

''(IV) total annual capital costs;

''(V) fleet size and type, and related facilities;

''(VI) revenue vehicle miles; and

''(VII) ridership.''; and

(5) by adding after paragraph (3) the following:

''(4) Of the amount made available to carry out paragraph (3)—

''(A) not more than 15 percent may be used to carry out projects of a national scope; and

''(B) any amounts not used under subparagraph (A) shall be allocated to the States.''.

(c) APPORTIONMENTS.—Section 5311(c) is amended to read as follows:

''(c) APPORTIONMENTS.—

''(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

''(A) $6,000,000 for fiscal year 2005.

''(B) $8,000,000 for fiscal year 2006.

''(C) $10,000,000 for fiscal year 2007.

''(D) $12,000,000 for fiscal year 2008.

''(E) $15,000,000 for fiscal year 2009.

''(2) REMAINING AMOUNTS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338 that are not apportioned under paragraph (1)—

''(A) 20 percent shall be apportioned to the States in accordance with paragraph (3); and

''(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).

''(3) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

''(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (2)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

''(4) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (2)(B) multiplied by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.''.

(d) USE FOR ADMINISTRATIVE, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) by striking ''AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation'' and inserting '', PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary'';

(2) by striking ''to a recipient''; and

(3) by striking paragraph (2).

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—''; and

(B) by striking ''after September 30, 1993,''; and

(2) in paragraph (2)—

(A) by striking ''A State'' and inserting ''After consultation with affected intercity bus service providers, a State''; and

(B) by striking ''of Transportation''.

(f) FEDERAL SHARE OF COSTS.—Section 5311(g) is amended to read as follows:

''(g) FEDERAL SHARE OF COSTS.—

''(1) MAXIMUM FEDERAL SHARE.—

''(A) CAPITAL PROJECTS.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant awarded under this section for any purpose other than operating assistance may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Federal share of the net capital costs in accordance with the formula under that section.

''(B) OPERATING ASSISTANCE.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Federal share of the net operating costs equal to 62.5 percent of the Federal share provided for under subparagraph (A)(ii).

''(2) OTHER FUNDING SOURCES.—Funds for a project under this section that are not provided for by a grant under this section—

''(A) may be provided from—

''(i) an undistributed cash surplus;

''(ii) a replacement or depreciation cash fund or reserve;

''(iii) a service agreement with a State or local social service agency or a private social service organization; or

''(iv) new capital; and

''(B) may be derived from amounts appropriated to or made available to a Federal agency (other than the Department of Transportation, except for Federal Land Highway funds) that are eligible to be expended for transportation.

''(3) USE OF FEDERAL GRANT.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Federal grant for the payment of operating expenses.

''(4) EXCEPTION.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(c)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(c)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.''.

(g) WAIVER CONDITION.—Section 5311(j)(1) is amended by striking ''but the Secretary of Labor may waive the application of section 5333(b)'' and inserting ''if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees''.

SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

(a) IN GENERAL.—Section 5312 is amended—

(1) by amending subsection (a) to read as follows:

''(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with departments, agencies, and instrumentalities of the United States Government) for research, development, demonstration or deployment projects, or evaluation of technology of national significance to public transportation that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

''(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

''(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under any other law.'';

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as (b) and (c), respectively.

(4) in subsection (b), as redesignated—

(A) in paragraph (2), by striking ''other agreements'' and inserting ''other transactions''; and

(B) in paragraph (5), by striking ''within the Mass Transit Account of the Highway Trust Fund''; and

(5) in subsection (c), as redesignated—

(A) in paragraph (2), by striking ''public and private'' and inserting ''public or private''; and

(B) in paragraph (3), by striking ''within the Mass Transit Account of the Highway Trust Fund'' .

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5312 is amended to read as follows:

''§ 5312. Research, development, demonstration, and deployment projects''.

(2) TABLE OF SECTIONS.—The item relating to section 5312 in the table of sections for chapter 53 is amended to read as follows:

''5312. Research, development, demonstration, and deployment projects.''.

SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 5313 is amended—

(1) by striking subsection (b);

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1) The amounts made available under paragraphs (1) and (2)C)(ii) of section 5338(c) of this title'' and inserting ''The amounts made available under subsections (a)(5)(C)(iii) and (b)(2)(G)(i) of section 5338''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(b) FEDERAL ASSISTANCE.—''; and

(3) by amending subsection (c) to read as follows:

''(c) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Federal share consistent with such benefit.''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5313 is amended to read as follows:

''§ 5313. Transit cooperative research program''.

(2) TABLE OF SECTIONS.—The item relating to section 5313 in the table of sections for chapter 53 is amended to read as follows:

''5313. Transit cooperative research program.''.

SEC. 3016. NATIONAL RESEARCH PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) AVAILABILITY OF FUNDS.—The Secretary may use amounts made available under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338 for grants, contracts, cooperative agreements, or other transactions for the purposes described in sections 5312, 5315, and 5322.'';

(B) in paragraph (2), by striking ''(2) Of'' and inserting the following:

''(2) ADA COMPLIANCE.—From'';

(C) by amending paragraph (3) to read as follows:

''(3) SPECIAL DEMONSTRATION INITIATIVES.—The Secretary may use not more than 25 percent of the amounts made available under paragraph (1) for special demonstration initiatives, subject to terms that the Secretary determines to be consistent with this chapter. For a nonrenewable grant of not more than $100,000, the Secretary shall provide expedited procedures for complying with the requirements of this chapter.'';

(D) in paragraph (4)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(E) by adding at the end the following:

''(6) MEDICAL TRANSPORTATION DEMONSTRATION GRANTS.—

''(A) GRANTS AUTHORIZED.—The Secretary may award demonstration grants, from funds made available under paragraph (1), to eligible entities to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(B) ELIGIBLE ENTITIES.—An entity shall be eligible to receive a grant under this paragraph if the entity—

''(i) meets the conditions described in section 501(c)(3) of the Internal Revenue Code of 1986; or

''(ii) is an agency of a State or unit of local government.

''(C) USE OF FUNDS.—Grant funds received under this paragraph may be used to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(D) APPLICATION.—

''(i) IN GENERAL.—Each eligible entity desiring a grant under this paragraph shall submit an application to the Secretary at such time, at such place, and containing such information as the Secretary may reasonably require.

''(ii) SELECTION OF GRANTEES.—In awarding grants under this paragraph, the Secretary shall give preference to eligible entities from communities with—

''(I) high incidence of renal disease; and

''(II) limited access to dialysis facilities.

''(E) RULEMAKING.—The Secretary shall issue regulations to implement and administer the grant program established under this paragraph.

''(F) REPORT.—The Secretary shall submit a report on the results of the demonstration projects funded under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.''; and

(2) by amending subsection (b) to read as follows:

''(b) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other transaction financed under subsection (a) or section 5312, 5313, 5315, or 5322, the Secretary shall establish a Federal share consistent with such benefit.''.

(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION; ALTERNATIVE FUELS STUDY.—Section 5314 is amended by adding at the end the following:

''(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION.—

''(1) ESTABLISHMENT.—The Secretary shall award grants to a national not-for-profit organization for the establishment and maintenance of a national technical assistance center.

''(2) ELIGIBILITY.—An organization shall be eligible to receive the grant under paragraph (1) if the organization—

''(A) focuses significantly on serving the needs of the elderly;

''(B) has demonstrated knowledge and expertise in senior transportation policy and planning issues;

''(C) has affiliates in a majority of the States;

''(D) has the capacity to convene local groups to consult on operation and development of senior transportation programs; and

''(E) has established close working relationships with the Federal Transit Administration and the Administration on Aging.

''(3) USE OF FUNDS.—The national technical assistance center established under this section shall—

''(A) gather best practices from throughout the country and provide such practices to local communities that are implementing senior transportation programs;

''(B) work with teams from local communities to identify how they are successfully meeting the transportation needs of senior and any gaps in services in order to create a plan for an integrated senior transportation program;

''(C) provide resources on ways to pay for senior transportation services;

''(D) create a web site to publicize and circulate information on senior transportation programs;

''(E) establish a clearinghouse for print, video, and audio resources on senior mobility; and

''(F) administer the demonstration grant program established under paragraph (4).

''(4) GRANTS AUTHORIZED.—

''(A) IN GENERAL.—The national technical assistance center established under this section, in consultation with the Federal Transit Administration, shall award senior transportation demonstration grants to—

''(i) local transportation organizations;

''(ii) State agencies;

''(iii) units of local government; and

''(iv) nonprofit organizations.

''(B) USE OF FUNDS.—Grant funds received under this paragraph may be used to—

''(i) evaluate the state of transportation services for senior citizens;

''(ii) recognize barriers to mobility that senior citizens encounter in their communities;

''(iii) establish partnerships and promote coordination among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens;

''(iv) identify future transportation needs of senior citizens within local communities; and

''(v) establish strategies to meet the unique needs of healthy and frail senior citizens.

''(C) SELECTION OF GRANTEES.—The Secretary shall select grantees under this subsection based on a fair representation of various geographical locations throughout the United States.

''(5) ALLOCATIONS.—From the funds made available for each fiscal year under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338, $3,000,000 shall be allocated to carry out this subsection.

''(d) ALTERNATIVE FUELS STUDY.—

''(1) STUDY.—The Secretary shall conduct a study of the actions necessary to facilitate the purchase of increased volumes of alternative fuels (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) for use in public transit vehicles

''(2) SCOPE OF STUDY.—The study conducted under this subsection shall focus on the incentives necessary to increase the use of alternative fuels in public transit vehicles, including buses, fixed guideway vehicles, and ferries.

''(3) CONTENTS.—The study shall consider—

''(A) the environmental benefits of increased use of alternative fuels in transit vehicles;

''(B) existing opportunities available to transit system operators that encourage the purchase of alternative fuels for transit vehicle operation;

''(C) existing barriers to transit system operators that discourage the purchase of alternative fuels for transit vehicle operation, including situations where alternative fuels that do not require capital improvements to transit vehicles are disadvantaged over fuels that do require such improvements; and

''(D) the necessary levels and type of support necessary to encourage additional use of alternative fuels for transit vehicle operation.

''(4) RECOMMENDATIONS.—The study shall recommend regulatory and legislative alternatives that will result in the increased use of alternative fuels in transit vehicles.

''(5) REPORT.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit the study completed under this subsection to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives''.

(c) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 5314 is amended to read as follows:

''§ 5314. National research programs''.

(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

''5314. National research programs.''.

SEC. 3017. NATIONAL TRANSIT INSTITUTE.

(a) Section 5315 is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ESTABLISHMENT.—The Secretary shall award a grant to Rutgers University to conduct a national transit institute.

''(b) DUTIES.—

''(1) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established pursuant to subsection (a) shall develop and conduct training programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

''(2) TRAINING PROGRAMS.—The training programs developed under paragraph (1) may include courses in recent developments, techniques, and procedures related to—

''(A) intermodal and public transportation planning;

''(B) management;

''(C) environmental factors;

''(D) acquisition and joint use rights of way;

''(E) engineering and architectural design;

''(F) procurement strategies for public transportation systems;

''(G) turnkey approaches to delivering public transportation systems;

''(H) new technologies;

''(I) emission reduction technologies;

''(J) ways to make public transportation accessible to individuals with disabilities;

''(K) construction, construction management, insurance, and risk management;

''(L) maintenance;

''(M) contract administration;

''(N) inspection;

''(O) innovative finance;

''(P) workplace safety; and

''(Q) public transportation security.''; and

(2) in subsection (d), by striking ''mass'' each place it appears.

SEC. 3018. BUS TESTING FACILITY.

Section 5318 is amended—

(1) in subsection (a)—

(A) by striking ''ESTABLISHMENT.—The Secretary of Transportation shall establish one facility'' and inserting ''IN GENERAL.—The Secretary shall maintain 1 facility''; and

(B) by striking ''established by renovating'' and inserting ''maintained at''; and

(2) in subsection (d), by striking ''section 5309(m)(1)(C) of this title'' and inserting ''paragraphs (1)(C) and (2)(B) of section 5309(i)''.

SEC. 3019. BICYCLE FACILITIES.

Section 5319 is amended by striking ''5307(k)'' and inserting ''5307(d)(1)(K)''.

SEC. 3020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

Section 5320 is repealed.

SEC. 3021. CRIME PREVENTION AND SECURITY.

Section 5321 is repealed.

SEC. 3022. GENERAL PROVISIONS ON ASSISTANCE.

Section 5323 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

''(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

''(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

''(C) just compensation under State or local law will be paid to the company for its franchise or property.''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(2) LIMITATION.—'';

(2) by amending subsection (b) to read as follows:

''(b) NOTICE AND PUBLIC HEARING.—

''(1) IN GENERAL.—An application for a grant under this chapter for a capital project that will substantially affect a community, or the public transportation service of a community, shall include, in the environmental record for the project, evidence that the applicant has—

''(A) provided an adequate opportunity for public review and comment on the project;

''(B) held a public hearing on the project if the project affects significant economic, social, or environmental interests;

''(C) considered the economic, social, and environmental effects of the project; and

''(D) found that the project is consistent with official plans for developing the urban area.

''(2) CONTENTS OF NOTICE.—Notice of a hearing under this subsection—

''(A) shall include a concise description of the proposed project; and

''(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.'';

(3) by amending subsection (c) to read as follows:

''(c) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.'';

(4) by amending subsection (d) to read as follows:

''(d) CONDITIONS ON BUS TRANSPORTATION SERVICE.—Financial assistance under this chapter may be used to buy or operate a bus only if the recipient agrees to comply with the following conditions on bus transportation service:

''(1) CHARTER BUS SERVICE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), a recipient may provide incidental charter bus service only within its lawful service area if—

''(i) the recipient annually publishes, by electronic and other appropriate means, a notice—

''(I) indicating its intent to offer incidental charter bus service within its lawful service area; and

''(II) soliciting notices from private bus operators that wish to appear on a list of carriers offering charter bus service in that service area;

''(ii) the recipient provides private bus operators with an annual opportunity to notify the recipient of its desire to appear on a list of carriers offering charter bus service in such service area;

''(iii) upon receiving a request for charter bus service, the recipient electronically notifies the private bus operators listed as offering charter service in that service area with the name and contact information of the requestor and the nature of the charter service request; and

''(iv) the recipient does not offer to provide charter bus service unless no private bus operator indicates that it is willing and able to provide the service within a 72-hour period after the receipt of such notice.

''(B) EXCEPTION.—A recipient that operates 2,000 or fewer vehicles in fixed-route peak hour service may provide incidental charter bus transportation directly to —

''(i) local governments; and

''(ii) social service entities with limited resources.

''(C) IRREGULARLY SCHEDULED EVENTS.—Service, other than commuter service, by a recipient to irregularly scheduled events, where the service is conducted in whole or in part outside the service area of the recipient, regardless of whether the service is contracted for individually with passengers, is subject to a rebuttable presumption that such service is charter service.

''(2) VIOLATION OF AGREEMENTS.—

''(A) COMPLAINTS.—A complaint regarding the violation of a charter bus service agreement shall be submitted to the Regional Administrator of the Federal Transit Administration, who shall—

''(i) provide a reasonable opportunity for the recipient to respond to the complaint;

''(ii) provide the recipient with an opportunity for an informal hearing; and

''(iii) issue a written decision not later than 60 days after the parties have completed their submissions.

''(B) APPEALS.—

''(i) IN GENERAL.—A decision by the Regional Administrator may be appealed to a panel comprised of the Federal Transit Administrator, personnel in the Office of the Secretary of Transportation, and other persons with expertise in surface passenger transportation issues.

''(ii) STANDARD OF REVIEW.—The panel described in clause (i) shall consider the complaint de novo on all issues of fact and law.

''(iii) WRITTEN DECISION.—The appeals panel shall issue a written decision on an appeal not later than 60 days after the completion of submissions. This decision shall be the final order of the agency and subject to judicial review in district court.

''(C) CORRECTION.—If the Secretary determines that a violation of an agreement relating to the provision of charter service has occurred, the Secretary shall correct the violation under terms of the agreement.

''(D) REMEDIES.—The Secretary may issue orders to recipients to cease and desist in actions that violate the agreement, and such orders shall be binding upon the parties. In addition to any remedy spelled out in the agreement, if a recipient has failed to correct a violation within 60 days after the receipt of a notice of violation from the Secretary, the Secretary shall withhold from the recipient the lesser of—

''(i) 5 percent of the financial assistance available to the recipient under this chapter for the next fiscal year; or

''(ii) $200,000.

''(3) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue amended regulations that—

''(A) implement this subsection, as revised by such Act; and

''(B) impose restrictions, procedures, and remedies in connection with sightseeing service by a recipient.

''(4) PUBLIC NOTICE.—The Secretary shall make all written decisions, guidance, and other pertinent materials relating to the procedures in this subsection available to the public in electronic and other appropriate formats in a timely manner.'';

(5) by striking subsection (e);

(6) by redesignating subsection (f) as subsection (e);

(7) in subsection (e), as redesignated—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—'';

(B) by striking paragraph (2);

(C) by striking ''This subsection'' and inserting the following:

''(2) EXCEPTIONS.—This subsection; and

(D) by adding at the end the following:

''(3) PENALTY.—If the Secretary determines that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar the applicant, authority, or operator from receiving Federal transit assistance in an amount the Secretary determines to be appropriate.'';

(8) by inserting after subsection (e) the following:

''(f) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309, may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

''(2) REIMBURSEMENT BY SECRETARY.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient established pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309.'';

(9) in subsection (g)—

(A) by striking ''(f)'' each place it appears and inserting ''(e)''; and

(B) by striking ''103(e)(4) and 142 (a) or (c)'' each place it appears and inserting ''133 and 142'';

(10) by amending subsection (h) to read as follows:

''(h) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

(1) REQUEST BY SECRETARY.—If the Secretary determines that any part of the lands or interests in lands owned by the United States and made available as a result of a military base closure is necessary for transit purposes eligible under this chapter, including corridor preservation, the Secretary shall submit a request to the head of the Federal agency supervising the administration of such lands or interests in lands. Such request shall include a map showing the portion of such lands or interests in lands, which is desired to be transferred for public transportation purposes.

''(2) TRANSFER OF LAND.—If 4 months after submitting a request under paragraph (1), the Secretary does not receive a response from the Federal agency described in paragraph (1) that certifies that the proposed appropriation of land is contrary to the public interest or inconsistent with the purposes for which such land has been reserved, or if the head of such agency agrees to the utilization or transfer under conditions necessary for the adequate protection and utilization of the reserve, such land or interests in land may be utilized or transferred to a State, local governmental authority, or public transportation operator for such purposes and subject to the conditions specified by such agency.

''(3) REVERSION.—If at any time the lands or interests in land utilized or transferred under paragraph (2) are no longer needed for public transportation purposes, the State, local governmental authority, or public transportation operator that received the land shall notify to the Secretary, and such lands shall immediately revert to the control of the head of the Federal agency from which the land was originally transferred.'';

(11) in subsection (j)(5), by striking ''Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)'' and inserting ''Federal Public Transportation Act of 2004'';

(12) by amending subsection (*l*) to read as follows:

''(*l*) RELATIONSHIP TO OTHER LAWS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter, if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal transit program.'';

(13) in subsection (m), by inserting at the end the following: ''Requirements to perform preaward and postdelivery reviews of rolling stock purchases to ensure compliance with subsection (j) shall not apply to private nonprofit organizations or to grantees serving urbanized areas with a population of fewer than 1,000,000.'';

(14) in subsection (*o*), by striking ''the Transportation Infrastructure Finance and Innovation Act of 1998'' and inserting ''sections 181 through 188 of title 23''; and

(15) by adding at the end the following:

''(p) PROHIBITED USE OF FUNDS.—Grant funds received under this chapter may not be used to pay ordinary governmental or nonproject operating expenses.''.

SEC. 3023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

(a) IN GENERAL.—Section 5324 is amended to read as follows:

''§ 5324. Special provisions for capital projects

''(a) REAL PROPERTY AND RELOCATION SERVICES.—Whenever real property is acquired or furnished as a required contribution incident to a project, the Secretary shall not approve the application for financial assistance unless the applicant has made all payments and provided all assistance and assurances that are required of a State agency under sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630 and 4655). The Secretary must be advised of specific references to any State law that are believed to be an exception to section 301 or 302 of such Act (42 U.S.C. 4651 and 4652).

''(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

(1) IN GENERAL.—The Secretary may participate in the acquisition of real property for any project that may use the property if the Secretary determines that external market forces are jeopardizing the potential use of the property for the project and if—

''(A) there are offers on the open real estate market to convey that property for a use that is incompatible with the project under study;

''(B) there is an imminent threat of development or redevelopment of the property for a use that is incompatible with the project under study;

''(C) recent appraisals reflect a rapid increase in the fair market value of the property;

''(D) the property, because it is located near an existing transportation facility, is likely to be developed and to be needed for a future transportation improvement; or

''(E) the property owner can demonstrate that, for health, safety, or financial reasons, retaining ownership of the property poses an undue hardship on the owner in comparison to other affected property owners and requests the acquisition to alleviate that hardship.

''(2) ENVIRONMENTAL REVIEWS.—Property acquired in accordance with this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(3) LIMITATION.—The Secretary shall limit the size and number of properties acquired under this subsection as necessary to avoid any prejudice to the Secretary's objective evaluation of project alternatives.

''(4) EXEMPTION.—An acquisition under this section shall be considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

''(c) RAILROAD CORRIDOR PRESERVATION.—

''(1) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

''(2) ENVIRONMENTAL REVIEWS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

''(1) IN GENERAL.—The Secretary may not approve an application for financial assistance for a capital project under this chapter unless the Secretary determines that the project has been developed in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary's findings under this paragraph shall be made a matter of public record.

''(2) COOPERATION AND CONSULTATION.—In carrying out section 5301(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 is amended to read as follows:

''5324. Special provisions for capital projects.''.

SEC. 3024. CONTRACT REQUIREMENTS.

(a) IN GENERAL.—Section 5325 is amended to read as follows:

''§ 5325. Contract requirements

''(a) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

''(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

''(1) IN GENERAL.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, or an

equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

''(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

''(A) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

''(B) A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

''(C) After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

''(D) A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

''(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

''(d) DESIGN-BUILD PROJECTS.—

''(1) DEFINED TERM.—As used in this subsection, the term 'design-build project'—

''(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build an operable segment of a public transportation system that meets specific performance criteria; and

''(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

''(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

''(e) ROLLING STOCK.—

''(1) ACQUISITION.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

''(A) with a party selected through a competitive procurement process; or

''(B) based on—

''(i) initial capital costs; or

''(ii) performance, standardization, life cycle costs, and other factors.

''(2) MULTIYEAR CONTRACTS.—A recipient procuring rolling stock with Federal financial assistance under this chapter may make a multiyear contract, including options, to buy not more than 5 years of requirements for rolling stock and replacement parts. The Secretary shall allow a recipient to act on a cooperative basis to procure rolling stock under this paragraph and in accordance with other Federal procurement requirements.

''(f) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

''(g) GRANT PROHIBITION.—A grant awarded under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

''(h) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

''(i) AWARDS TO RESPONSIBLE CONTRACTORS.—

''(1) IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

''(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

''(A) the integrity of the contractor;

''(B) the contractor's compliance with public policy;

''(C) the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(m)(4); and

''(D) the contractor's financial and technical resources.''.

(b) CONFORMING AMENDMENTS.—Chapter 53 is amended by striking section 5326.

SEC. 3025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—Section 5327(a) is amended—

(1) in paragraph (11), by striking ''and'' at the end;

(2) in paragraph (12), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(13) safety and security management.''.

(b) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary may not use more than 1 percent of amounts made available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91–143) to make a contract to oversee the construction of major projects under any of sections 5307 through 5311, 5316, or 5317 or under that Act.'';

(2) in paragraph (2)—

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

''(2) OTHER ALLOWABLE USES.—''; and

(B) by inserting ''and security'' after ''safety''; and

(3) in paragraph (3), by striking ''(3) The Government shall'' and inserting the following:

''(3) FEDERAL SHARE.—Federal funds shall be used to''.

SEC. 3026. PROJECT REVIEW.

Section 5328 is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking ''(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant'' and inserting the following:

''(1) ALTERNATIVES ANALYSIS.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis under subsections (e) and (f) of section 5309'';

(B) in paragraph (2)—

(i) by striking ''(2)'' and inserting the following:

''(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—''; and

(ii) by striking ''is consistent with'' and inserting ''meets the requirements of'';

(C) in paragraph (3)—

(i) by striking ''(3)'' and inserting the following:

''(3) RECORD OF DECISION.—'';

(ii) by striking ''of construction''; and

(iii) by adding before the period at the end the following: ''if the Secretary determines that the project meets the requirements of subsection (e) or (f) of section 5309''; and

(D) by striking paragraph (4); and

(2) by striking subsection (c).

SEC. 3027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

''§ 5329. Investigation of safety hazards and security risks

''(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

''(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary establishes that a safety hazard or security risk warrants further protective measures, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for eliminating, mitigating, or correcting it.

''(c) WITHHOLDING OF FUNDS.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.

''(d) PUBLIC TRANSPORTATION SECURITY.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall enter into a memorandum of understanding with the Secretary of Homeland Security to define and clarify the respective roles and responsibilities of the Department of Transportation and the Department of Homeland Security relating to public transportation security.

''(2) CONTENTS.—The memorandum of understanding described in paragraph (1) shall—

''(A) establish national security standards for public transportation agencies;

''(B) establish funding priorities for grants from the Department of Homeland Security to public transportation agencies;

''(C) create a method of coordination with public transportation agencies on security matters; and

''(D) address any other issues determined to be appropriate by the Secretary and the Secretary of Homeland Security.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5329 in the table of sections for chapter 53 is amended to read as follows:

''5329. Investigation of safety hazards and security risks.''.

SEC. 3028. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by amending the heading to read as follows:

''§ 5330. Withholding amounts for noncompliance with State safety oversight requirements'';

(2) by amending subsection (a) to read as follows:

''(a) APPLICATION.—This section shall only apply to—

''(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

''(2) States that are designing rail fixed guideway public transportation systems that will not be subjected to regulation by the Federal Railroad Administration.'';

(3) in subsection (d), by striking ''affected States'' and inserting the following: ''affected States—

''(1) shall ensure uniform safety standards and enforcement; or

''(2) may designate''; and

(4) in subsection (f), by striking ''Not later than December 18, 1992, the'' and inserting ''The''.

(b) CONFORMING AMENDMENT.—The item relating to section 5330 in the table of sections for chapter 53 is amended to read as follows:

''5330. Withholding amounts for noncompliance with State safety oversight requirements.''.

SEC. 3029. SENSITIVE SECURITY INFORMATION.

Section 40119(b) is amended—

(1) in paragraph (1)(C), by inserting '', transportation facilities or infrastructure, or transportation employees'' before the period at the end; and

(2) by adding at the end the following:

''(3) A State or local government may not enact, enforce, prescribe, issue, or continue in effect any law, regulation, standard, or order to the extent it is inconsistent with this section or regulations prescribed under this section.''.

SEC. 3030. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Section 1993 of title 18, United States Code, is amended—

(1) by striking ''mass'' each place it appears and inserting ''public'';

(2) in subsection (a)(5), by inserting ''controlling,'' after ''operating''; and

(3) in subsection (c)(5), by striking ''5302(a)(7) of title 49, United States Code,'' and inserting ''5302(a) of title 49,''.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 97 of title 18, United States Code is amended by amending the item related to section 1993 to read as follows:

''1993. Terrorist attacks and other acts of violence against public transportation systems.''.

SEC. 3031. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(3), by inserting before the period at the end the following: ''or sections 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or other Federal agency''; and

(2) in subsection (f), by striking paragraph (3).

SEC. 3032. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 5333(b) is amended—

(1) in paragraph (3), by striking the period at the end and inserting '', provided that—

''(A) the protective period shall not exceed 4 years; and

''(B) the separation allowance shall not exceed 12 months.''; and

(2) by adding at the end the following:

''(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (2).

''(5) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and amendments to existing assistance agreements, shall be certified without referral.

''(6) Nothing in this subsection shall affect the level of protection provided to freight railroad employees.''.

SEC. 3033. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''5309–5311 of this title'' and all that follows and inserting ''5309 through 5311;'';

(B) in paragraph (9), by striking ''and'' at the end;

(C) in paragraph (10), by striking the period at the end and inserting ''; and''; and

(D) by inserting at the end the following:

''(11) issue regulations as necessary to carry out the purposes of this chapter.'';

(2) by redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively;

(3) by adding after subsection (a) the following:

''(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

''(1) IN GENERAL.—Except as directed by the President for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate—

''(A) the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter; or

''(B) the rates, fares, tolls, rentals, or other charges prescribed by any public or private transportation provider.

''(2) COMPLIANCE WITH AGREEMENT.—Nothing in this subsection shall prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.''; and

(4) in subsection (j)(1), as redesignated, by striking ''carry out section 5312(a) and (b)(1) of this title'' and inserting ''advise and assist the Secretary in carrying out section 5312(a)''.

SEC. 3034. REPORTS AND AUDITS.

Section 5335 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1)''; and

(B) in paragraph (2), by striking ''(2) The Secretary may make a grant under section 5307 of this title'' and inserting the following:

''(b) REPORTING AND UNIFORM SYSTEMS.—The Secretary may award a grant under section 5307 or 5311''.

SEC. 3035. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 is amended—

(1) by striking subsection (d);

(2) by striking subsection (h);

(3) by striking subsection (k);

(4) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(5) by adding before subsection (b), as redesignated, the following:

''(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(L) of section 5338—

''(1) there shall be apportioned, in fiscal year 2005 and each fiscal year thereafter, $35,000,000 to certain urbanized areas with populations of less than 200,000 in accordance with subsection (k); and

''(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (b) through (d).'';

(6) in subsection (b), as redesignated—

(A) by striking ''Of the amount made available or appropriated under section 5338(a) of this title'' and inserting ''Of the amount apportioned under subsection (a)(3)''; and

(B) in paragraph (2), by striking ''subsections (b) and (c) of this section'' and inserting ''subsections (c) and (d)'';

(7) in subsection (c)(2), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(8) in subsection (d), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(9) in subsection (e)(1), by striking ''subsections (a) and (h)(2) of section 5338 of this title'' and inserting ''subsections (a) and (b) of section 5338'';

(10) in subsection (g), by striking ''subsection (a)(1) of this section'' each place it appears and inserting ''subsection (b)(1)''; and

(11) by adding at the end the following:

''(k) SMALL TRANSIT INTENSIVE CITIES FACTORS.—The amount apportioned under subsection (a)(1) shall be apportioned to urbanized areas as follows:

''(1) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

''(2) The Secretary shall designate as eligible for an apportionment under this subsection all urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under paragraph (1).

''(3) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under paragraph (1).

''(4) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle hours within that urbanized area less the amount calculated in paragraph (3).

''(5) Each urbanized area qualifying for an apportionment under paragraph (2) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under paragraph (4) divided by the sum of the amounts calculated under paragraph (4) for all urbanized areas qualifying for an apportionment under paragraph (2).

''(*l*) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

''(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

''(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

''(ii) the optimal number and size of any incentive programs;

''(iii) what types of systems should compete for various incentives;

''(iv) how incentives should be distributed; and

''(v) the likely effects of the incentive funding system.''.

SEC. 3036. APPORTIONMENTS FOR FIXED GUIDEWAY MODERNIZATION.

Section 5337 is amended—

(1) in subsection (a), by striking ''for each of fiscal years 1998 through 2003''; and

(2) by striking ''section 5336(b)(2)(A)'' each place it appears and inserting ''section 5336(c)(2)(A)''.

SEC. 3037. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

''§ 5338. Authorizations

''(a) FISCAL YEAR 2004.—

''(1) FORMULA GRANTS.—

''(A) TRUST FUND.—For fiscal year 2004, $3,053,079,920 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $763,269,980 for fiscal year 2004 to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $4,821,335 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

''(ii) $6,908,995 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(iii) $90,117,950 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

''(iv) $239,188,058 shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(v) $3,425,608,562 shall be available to provide financial assistance for urbanized areas under section 5307; and

''(vi) $49,705,000 shall be available to provide financial assistance for buses and bus facilities under section 5309.

''(2) JOB ACCESS AND REVERSE COMMUTE.—

''(A) TRUST FUND.—For fiscal year 2004, $99,410,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 3037 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note).

''(B) GENERAL FUND.—In addition to the amounts made available under paragraph (A), there are authorized to be appropriated $24,852,500 for fiscal year 2004 to carry out section 3037 of the Transportation Equity Act of the 21st Century (49 U.S.C. 5309 note).

''(3) CAPITAL PROGRAM GRANTS.—

''(A) TRUST FUND.—For fiscal year 2004, $2,495,191,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $623,797,750 for fiscal year 2004 to carry out section 5309.

''(4) PLANNING.—

''(A) TRUST FUND.—For fiscal year 2004, $58,254,260 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5308.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $14,315,040 for fiscal year 2004 to carry out section 5308.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) 82.72 percent shall be allocated for metropolitan planning under section 5308(c); and

''(ii) 17.28 percent shall be allocated for State planning under section 5308(d).

''(5) RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2004, $41,951,020 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $10,736,280 for fiscal year 2004 to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(C) ALLOCATION OF FUNDS.—Of the funds made available or appropriated under this paragraph—

''(i) not less than $3,976,400 shall be available to carry out programs of the National Transit Institute under section 5315;

''(ii) not less than $5,219,025 shall be available to carry out section 5311(b)(2);

''(iii) not less than $8,201,325 shall be available to carry out section 5313; and

''(iv) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

''(6) UNIVERSITY TRANSPORTATION RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2004, $4,771,680 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5505 and 5506.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $1,192,920 for fiscal year 2004 to carry out sections 5505 and 5506.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $1,988,200 shall be available for grants under 5506(f)(5) to the institution identified in section 5505(j)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2004;

''(ii) $1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(A), as in effect on the date specified in clause (i); and

''(iii) $1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(F), as in effect on the date specified in subclause (I).

''(C) SPECIAL RULE.—Nothing in this paragraph shall be construed to limit the transportation research conducted by the centers receiving financial assistance under this section.

''(7) ADMINISTRATION.—

''(A) TRUST FUND.—For fiscal year 2004, $60,043,640 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $15,010,910 for fiscal year 2004 to carry out section 5334.

''(8) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(A) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available under paragraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(B) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance under paragraph (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or (7)(B) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

''(9) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.''.

''(b) FORMULA GRANTS AND RESEARCH.—

''(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5309, 5310 through 5316, 5322, 5335, 5340, and 5505 of this title, and sections 3037 and 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

''(A) $6,262,600,000 for fiscal year 2005;

''(B) $6,577,629,000 for fiscal year 2006;

''(C) $6,950,400,000 for fiscal year 2007;

''(D) $7,594,760,000 for fiscal year 2008; and

''(E) $8,275,320,000 for fiscal year 2009.

''(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1) for each fiscal year—

''(A) 0.092 percent shall be available for grants to the Alaska Railroad under section 5307 for improvements to its passenger operations;

''(B) 1.75 percent shall be available to carry out section 5308;

''(C) 2.05 percent shall be available to provide financial assistance for job access and reverse commute projects under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note);

''(D) 3.00 percent shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

''(E) 0.125 percent shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(F) 6.25 percent shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(G) 0.89 percent shall be available to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5505, and national research programs under sections 5312, 5313, 5314, and 5322, of which—

''(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5313;

''(ii) 7.5 percent shall be allocated to carry out programs under the National Transit Institute under section 5315, including not more than $1,000,000 to carry out section 5315(a)(16);

''(iii) 11.0 percent shall be allocated to carry out the university centers program under section 5505; and

''(iv) any funds made available under this subparagraph that are not allocated under clauses (i) through (iii) shall be allocated to carry out national research programs under sections 5312, 5313, 5314, and 5322;

''(H) $25,000,000 shall be available for each of the fiscal years 2005 through 2009 to carry out section 5316;

''(I) there shall be available to carry out section 5335—

''(i) $3,700,000 in fiscal year 2005;

''(iii) $3,900,000 in fiscal year 2006;

''(iv) $4,200,000 in fiscal year 2007;

''(v) $4,600,000 in fiscal year 2008; and

''(vi) $5,000,000 in fiscal year 2009;

''(J) 6.25 percent shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and

''(K) 22.0 percent shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(i)(3); and

''(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

''(3) UNIVERSITY CENTERS PROGRAM.—

''(A) ALLOCATION.—Of the amounts allocated under paragraph (2)(G)(iii), $1,000,000 shall be available in each of the fiscal years 2005 through 2009 for Morgan State University to provide transportation research, training, and curriculum development.

''(B) REQUIREMENTS.—The university specified under subparagraph (A) shall be considered a University Transportation Center under section 510 of title 23, and shall be subject to the requirements under subsections (c), (d), (e), and (f) of such section.

''(C) REPORT.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university's contribution to public transportation.

''(4) BUS GRANTS.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309(i)(2)(B)—

''(A) $839,829,000 for fiscal year 2005;
''(B) $882,075,000 for fiscal year 2006;
''(C) $932,064,000 for fiscal year 2007;
''(D) $1,018,474,000 for fiscal year 2008; and
''(E) $1,109,739,000 for fiscal year 2009.

''(c) MAJOR CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(i)(2)(A)—

''(1) $1,461,072,000 for fiscal year 2005;
''(2) $1,534,568,000 for fiscal year 2006;
''(3) $1,621,536,000 for fiscal year 2007;
''(4) $1,771,866,000 for fiscal year 2008; and
''(5) $1,930,641,000 for fiscal year 2009.

''(d) ADMINISTRATION.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

''(1) $86,500,000 for fiscal year 2005;
''(2) $90,851,000 for fiscal year 2006;
''(3) $96,000,000 for fiscal year 2007;
''(4) $104,900,000 for fiscal year 2008; and
''(5) $114,300,000 for fiscal year 2009.

''(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(1) MASS TRANSIT ACCOUNT FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1) or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(2) APPROPRIATED FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(2) or (c) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated in advance for such purpose by an Act of Congress.

''(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (b) and (c) shall remain available until expended.''.

SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS.

(a) IN GENERAL.—Chapter 53 is amended by adding at the end the following:

''§ 5340. Apportionments based on growing States and high density State formula factors

''(a) ALLOCATION.—Of the amounts made available for each fiscal year under section 5338(b)(2)(J), the Secretary shall apportion—

''(1) 50 percent to States and urbanized areas in accordance with subsection (b); and

''(2) 50 percent to States and urbanized areas in accordance with subsection (c).

''(b) GROWING STATE APPORTIONMENTS.—

''(1) APPORTIONMENT AMONG STATES.—The amounts apportioned under paragraph (a)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census. Such forecast shall be based on the population trend for each State between the most recent decennial census and the most recent estimate of population made by the Secretary of Commerce.

''(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (b)(2)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (b)(2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.

''(c) HIGH DENSITY STATE APPORTIONMENTS.—Amounts to be apportioned under subsection (a)(2) shall be apportioned as follows:

''(1) ELIGIBLE STATES.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

''(2) STATE URBANIZED LAND FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the product of the urban land area of urbanized areas in the State times 370 persons per square mile.

''(3) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).

''(4) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).

''(5) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts apportioned to each State under paragraph (4) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the population of all urbanized areas in that State divided by the total population of that State.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (a) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(6) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (c)(5)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (c)(5)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following:

''5340. Apportionments based on growing States and high density States formula factors.''.

SEC. 3039. JOB ACCESS AND REVERSE COMMUTE GRANTS.

Section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking ''means an individual'' and inserting the following: ''means—

''(A) an individual''; and

(ii) by striking the period at the end and inserting ''; or

''(B) an individual who is eligible for assistance under the State program of Temporary Assistance to Needy Families funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et. seq.) in the State in which the recipient of a grant under this section is located.''; and

(B) in paragraph (2), by striking ''development of'' each place it appears and inserting ''development and provision of'';

(2) in subsection (i), by amending paragraph (2) to read as follows:

''(2) COORDINATION.—

''(A) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

''(B) CERTIFICATION.—A recipient of funds under this section shall certify that—

''(i) the project has been derived from a locally developed, coordinated public transit human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.'';

(3) by amending subsection (j) to read as follows:

''(j) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) URBANIZED AREAS.—A grant awarded under this section to a public agency or private company engaged in public transportation in an urbanized area shall be subject

to the all of the terms and conditions to which a grant awarded under section 5307 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(B) OTHER THAN URBANIZED AREAS.—A grant awarded under this section to a public agency or a private company engaged in public transportation in an area other than urbanized areas shall be subject to all of the terms and conditions to which a grant awarded under section 5311 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(C) NONPROFIT ORGANIZATIONS.—A grant awarded under this section to a private nonprofit organization shall be subject to all of the terms and conditions to which a grant made under section 5310 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(2) SPECIAL WARRANTY.—

''(A) IN GENERAL.—Section 5333(b) of title 49, United States Code, shall apply to grants under this section if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees.

''(B) WAIVER.—The Secretary may waive the applicability of the Special Warranty under subparagraph (A) for private non-profit recipients on a case-by-case basis as the Secretary considers appropriate.''; and

(4) by striking subsections (k) and (*l*).

SEC. 3040. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

(a) SECTION HEADING.—The section heading for section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note), is amended to read as follows:

''SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.''.

(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

''(g) FUNDING.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(iii) and (b)(2)(E) of section 5338 of title 49, United States Code—

''(1) 75 percent shall be available, and shall remain available until expended, for operators of over-the-road buses, used substantially or exclusively in intercity, fixed-route over-the-road bus service, to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses; and

''(2) 25 percent shall be available, and shall remain available until expended, for operators of over-the-road bus service not described in paragraph (1), to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses.''.

(b) CONFORMING AMENDMENT.—The item relating to section 3038 in the table of contents for the Transportation Equity Act for the 21st Century (Public Law 105–178) is amended to read as follows:

''Sec. 3038. Over-the-road bus accessibility program.''.

SEC. 3041. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5315 the following:

''§ 5316. Alternative transportation in parks and public lands

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—

''(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award a grant or enter into a contract, cooperative agreement, interagency agreement, intraagency agreement, or other transaction to carry out a qualified project under this section to enhance the protection of America's National Parks and public lands and increase the enjoyment of those visiting the parks and public lands by ensuring access to all, including persons with disabilities, improving conservation and park and public land opportunities in urban areas through partnering with state and local governments, and improving park and public land transportation infrastructure.

''(B) CONSULTATION WITH OTHER AGENCIES.—To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary of the Interior shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under this section.

''(2) USE OF FUNDS.—A grant, cooperative agreement, interagency agreement, intraagency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

''(b) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) ELIGIBLE AREA.—The term 'eligible area' means any federally owned or managed park, refuge, or recreational area that is open to the general public, including—

''(A) a unit of the National Park System;

''(B) a unit of the National Wildlife Refuge System;

''(C) a recreational area managed by the Bureau of Land Management; and

''(D) a recreation area managed by the Bureau of Reclamation.

''(2) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area.

''(3) ALTERNATIVE TRANSPORTATION.—The term 'alternative transportation' means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service.

''(4) QUALIFIED PARTICIPANT.—The term 'qualified participant' means—

''(A) a Federal land management agency; or

''(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other Governmental or nongovernmental participant.

''(5) QUALIFIED PROJECT.—The term 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—

''(A) is an activity described in section 5302, 5303, 5304, 5308, or 5309(a)(1)(A);

''(B) involves—

''(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of this section with clean fuel vehicles; or

''(ii) the deployment of alternative transportation vehicles that introduce innovative technologies or methods;

''(C) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;

''(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);

''(E) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

''(F) is any other alternative transportation project that—

''(i) enhances the environment;

''(ii) prevents or mitigates an adverse impact on a natural resource;

''(iii) improves Federal land management agency resource management;

''(iv) improves visitor mobility and accessibility and the visitor experience;

''(v) reduces congestion and pollution (including noise pollution and visual pollution); or

''(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

''(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

''(1) technical assistance in alternative transportation;

''(2) interagency and multidisciplinary teams to develop Federal land management agency alternative transportation policy, procedures, and coordination; and

''(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

''(d) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(a)(2)(I) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

''(2) ADDITIONAL AMOUNTS.—Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this title or any other provision of law.

''(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5338(a)(2)(I) for any fiscal year.

''(e) PLANNING PROCESS.—In undertaking a qualified project under this section,

''(1) if the qualified participant is a Federal land management agency—

''(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

''(i) the metropolitan planning provisions under section 5303 of this title;

''(ii) the statewide planning provisions under section 5304 of this title; and

''(iii) the public participation requirements under section 5307(e); and

''(B) in the case of a qualified project that is at a unit of the National Park system, the planning process shall be consistent with the general management plans of the unit of the National Park system; and

''(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

''(A) comply with the metropolitan planning provisions under section 5303 of this title;

''(B) comply with the statewide planning provisions under section 5304 of this title;

''(C) comply with the public participation requirements under section 5307(e) of this title; and

''(D) consult with the appropriate Federal land management agency during the planning process.

''(f) COST SHARING.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, shall establish the agency share of net project cost to be provided under this section to a qualified participant.

''(2) In establishing the agency share of net project cost to be provided under this section, the Secretary shall consider—

''(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

''(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

''(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

''(D) the clear and direct benefit to the qualified participant; and

''(E) any other matters that the Secretary considers appropriate to carry out this section.

''(3) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

''(g) SELECTION OF QUALIFIED PROJECTS.—

''(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

''(2) In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

''(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

''(B) the location of the qualified project, to ensure that the selected qualified projects—

''(i) are geographically diverse nationwide; and

''(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

''(C) the size of the qualified project, to ensure that there is a balanced distribution;

''(D) the historical and cultural significance of a qualified project;

''(E) safety;

''(F) the extent to which the qualified project would-

''(i) enhance livable communities;

''(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

''(iii) reduce congestion; and

''(iv) improve the mobility of people in the most efficient manner; and

''(G) any other matters that the Secretary considers appropriate to carry out this section, including-

''(i) visitation levels;

''(ii) the use of innovative financing or joint development strategies; and

''(iii) coordination with gateway communities.

''(h) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

''(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

''(A) the qualified participant applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

''(2)(A) The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

''(B) The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

''(C) The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

''(i) RELATIONSHIP TO OTHER LAWS.—

''(1) SECTION 5307.—A qualified participant under this section shall be subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

''(2) OTHER REQUIREMENTS.—A qualified participant under this section is subject to any other terms, conditions, requirements, and provisions that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

''(3) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than $25,000,000—

''(A) the qualified project shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement, in accordance with section 5309(g); and

''(B) the qualified participant shall prepare a project management plan in accordance with section 5327(a).

''(i) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

''(j) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other transactions for research, development, and deployment of new technologies in eligible areas that will—

''(A) conserve resources;

''(B) prevent or mitigate adverse environmental impact;

''(C) improve visitor mobility, accessibility, and enjoyment; and

''(D) reduce pollution (including noise pollution and visual pollution).

''(2) The Secretary may request and receive appropriate information from any source.

''(3) Grants, cooperative agreements, contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

''(k) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a state infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

''(*l*) REPORTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

''(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(B) the Committee on Transportation and Infrastructure of the House of Representatives.

''(2) ANNUAL AND SUPPLEMENTAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(m).''.

(b) CONFORMING AMENDMENTS.—The table of sections for chapter 53 is amended by inserting after the item relating to section 5315 the following:

''5316. Alternative transportation in parks and public lands.''.

SEC. 3042. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (c) of section 5338 of title 49, United States Code, shall not exceed—

(1) $7,265,876,900 for fiscal year 2004;
(2) $8,650,000,000 for fiscal year 2005;
(3) $9,085,123,000 for fiscal year 2006;
(4) $9,600,000,000 for fiscal year 2007;
(5) $10,490,000,000 for fiscal year 2008; and
(6) $11,430,000,000 for fiscal year 2009.

SEC. 3043. ADJUSTMENTS FOR THE SURFACE TRANSPORTATION EXTENSION ACT OF 2003.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2004 to each grant recipient under section 5338 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2003 (117 Stat. 1121).

(b) FIXED GUIDEWAY MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amount apportioned for fiscal year 2004 to each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in 5337(a) of title 49, United States Code.

SEC. 3044. DISADVANTAGED BUSINESS ENTERPRISE.

Section 1101(b) of the Transportation Equity Act of the 21st Century shall apply to all funds authorized or otherwise made available under this title.

SEC. 3045. INTERMODAL PASSENGER FACILITIES.

(a) IN GENERAL.—Chapter 55 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

§ 5571. Policy and purposes

''(a) DEVELOPMENT AND ENHANCEMENT OF INTERMODAL PASSENGER FACILITIES.—It is in the economic interest of the United States to improve the efficiency of public surface transportation modes by ensuring their connection with and access to intermodal passenger terminals, thereby streamlining the transfer of passengers among modes, enhancing travel options, and increasing passenger transportation operating efficiencies.

''(b) GENERAL PURPOSES.—The purposes of this subchapter are to accelerate intermodal integration among North America's passenger transportation modes through—

''(1) ensuring intercity public transportation access to intermodal passenger facilities;

''(2) encouraging the development of an integrated system of public transportation information; and

''(3) providing intercity bus intermodal passenger facility grants.

§ 5572. Definitions

''In this subchapter—

''(1) 'capital project' means a project for—

''(A) acquiring, constructing, improving, or renovating an intermodal facility that is related physically and functionally to intercity bus service and establishes or enhances coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, seaports, and the National Highway System, such as physical infrastructure associated with private bus operations at existing and new intermodal facilities, including special lanes, curb cuts, ticket kiosks and counters, baggage and package express storage, employee parking, office space, security, and signage; and

''(B) establishing or enhancing coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, and the National Highway System through an integrated system of public transportation information.

''(2) 'commuter service' means service designed primarily to provide daily work trips within the local commuting area.

''(3) 'intercity bus service' means regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available and may include package express service, if incidental to passenger transportation, but does not include air, commuter, water or rail service.

''(4) 'intermodal passenger facility' means passenger terminal that does, or can be modified to, accommodate several modes of transportation and related facilities, including some or all of the following: intercity rail, intercity bus, commuter rail, intracity rail transit and bus transportation, airport limousine service and airline ticket offices, rent-a-car facilities, taxis, private parking, and other transportation services.

''(5) 'local governmental authority' includes—

''(A) a political subdivision of a State;

''(B) an authority of at least one State or political subdivision of a State;

''(C) an Indian tribe; and

''(D) a public corporation, board, or commission established under the laws of the State.

''(6) 'owner or operator of a public transportation facility' means an owner or operator of intercity-rail, intercity-bus, commuter-rail, commuter-bus, rail-transit, bus-transit, or ferry services.

''(7) 'recipient' means a State or local governmental authority or a nonprofit organization that receives a grant to carry out this section directly from the Federal government.

''(8) 'Secretary' means the Secretary of Transportation.

''(9) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

''(10) 'urban area' means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in the locality.

''§ 5573. Assurance of access to intermodal passenger facilities

''Intercity buses and other modes of transportation shall, to the maximum extent practicable, have access to publicly funded intermodal passenger facilities, including those passenger facilities seeking funding under section 5574.

''§ 5574. Intercity bus intermodal passenger facility grants

''(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to recipients in financing a capital project only if the Secretary finds that the proposed project is justified and has adequate financial commitment.

''(b) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.

''(c) SHARE OF NET PROJECT COSTS.—A grant shall not exceed 50 percent of the net project cost, as determined by the Secretary.

''(d) REGULATIONS.—The Secretary may promulgate such regulations as are necessary to carry out this section.

''§ 5575. Funding

''(a) HIGHWAY ACCOUNT.—

''(1) There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter $10,000,000 for each of fiscal years 2005 through 2009.

''(2) The funding made available under paragraph (1) shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23 and shall be subject to any obligation limitation imposed on funds for Federal-aid highways and highway safety construction programs.

''(b) PERIOD OF AVAILABILITY.—Amounts made available under subsection (a) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 55 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

Sec.
''5571. Policy and Purposes.
''5572. Definitions.
''5573. Assurance of access to intermodal facilities.
''5574. Intercity bus intermodal facility grants.
''5575. Funding.''.

SA 2614. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 1072, 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 in the appropriate place

SECTION 1. TEMPORARY SPECIAL RULES FOR REFUND OF THE COAL EXCISE TAX TO CERTAIN COAL EXPORTERS.

(a) IN GENERAL.—Notwithstanding sections 6416(a)(1) and (c) and 6511 of the Internal Revenue Code of 1986, the amount of any tax imposed on exported coal under section 4121 of such Code shall be refunded to the exporter of such coal and consistent with the requirements of this section and otherwise applicable provisions of such Code.

(b) LIMITATIONS.—

(1) TIME OF FILING.—Subsection (a) shall apply only with respect to amounts of tax for which a return was filed on or after December 28, 1992, and before April 1, 2003.

(2) EXPORTERS RELATED TO PRODUCERS EXCLUDED.—Subsection (a) shall not apply with respect to the amount of tax on any coal if the exporter of such coal is also the producer of such coal—

(A) is related (within the meaning of section 144(a)(3) of such Code) to the producers or seller of such coal, or

(B) has a contract, fee arrangement, or any other agreement with the producer or seller of such coal to sell such coal to a third party on behalf of the producer or seller of such coal.

(c) REQUIREMENTS.—No refund shall be made under this section unless the exporter establishes, through statements, documentation or other evidence—

(1) the amount of the tax imposed under section 4121 of such Code on such coal;

(2) the quarter and year that such tax was required to be remitted or paid by the producer or seller of the coal to the Secretary;

(3) that the amount of such tax was included in the price paid by the exporter for such coal;

(4) that such coal was exported; and

(5) that the exporter—

(A) has not included the tax in the price of such coal and has not collected the amount of such tax from the person who purchased such coal;

(B) has repaid the amount of the tax to the ultimate purchaser of the coal to the making of the refund; or

(C) has filed with the Secretary the written consent of the ultimate purchaser of the coal to the making of the refund.

(d) PRESUMPTION OF PAYMENT.—If the requirements of Subsection (c) are met, it is presumed that the tax was paid or remitted by the exporter to the government, and the exporter shall be treated as the person (and the only person) who paid the tax.

(e) SUNSET.—This section shall not apply to any claim for refund filed after the date which is 1 year after the date of the enactment of this Act.

SA 2615. Ms. LANDRIEU (for herself, Mr. BREAUX, Mrs. LINCOLN, and Mr. PRYOR) submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

On page 39, between lines 22 and 23, insert the following:

(17) FINISH PROGRAM.—For the FINISH program under section 178 of that title, for each of fiscal years 2004 through 2009, an amount equal to 6.4 percent of the amounts received in the Highway Trust Fund (other than the Mass Transit Account) for the fiscal year under section 9503(b) of the Internal Revenue Code of 1986.

On page 389, between lines 15 and 16, insert the following:

SEC. 18___. FINISH PROGRAM.

(a) IN GENERAL.—Subtitle I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

''§ 178. 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 2004 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 in 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 in the fiscal year for the completion of eligible projects described in subsection (b) in all States.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For each of fiscal years 2004 through 2009, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section an amount equal to 6.4 percent of the amounts received in the Highway Trust Fund (other than the Mass Transit Account) for the fiscal year under section 9503(b) of the Internal Revenue Code of 1986.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. FINISH program.''.

SA 2616. Mr. INHOFE proposed an amendment to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

On page 39, line 6, strike ''$38,000,000'' and insert ''$50,000,000''.

On page 58, line 21, add a period after the closing quotation marks.

Beginning on page 80, strike line 7 and all that follows through page 81, line 3, and insert the following:

SEC. 1204. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL AND MAINTENANCE FACILITIES; COORDINATION OF FERRY CONSTRUCTION AND MAINTENANCE.

(a) IN GENERAL.—Section 147 of title 23, United States Code, is amended to read as follows:

''§ 147. Construction of ferry boats and ferry terminal and maintenance facilities; coordination of ferry construction and maintenance

''(a) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—

''(1) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).

''(2) FEDERAL SHARE.—The Federal share of the cost of construction of ferry boats and ferry terminals and maintenance facilities under this subsection shall be 80 percent.

''(3) ALLOCATION OF FUNDS.—The Secretary shall give priority in the allocation of funds under this subsection to those ferry systems, and public entities responsible for developing ferries, that—

''(A) carry the greatest number of passengers and vehicles;

''(B) carry the greatest number of passengers in passenger-only service; or

''(C) provide critical access to areas that are not well-served by other modes of surface transportation.

''(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $50,000,000 for each fiscal year to carry out this section.

''(2) AVAILABILITY.—Notwithstanding section 118(a), funds made available under paragraph (1) shall be available in advance of an annual appropriation.

(b) CONFORMING AMENDMENTS.—

(1) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 147 and inserting the following:

''147. Construction of ferry boats and ferry terminal and maintenance facilities.''.

(2) Section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2005) is repealed.

On page 82, line 16, insert ''and'' after the semicolon.

On page 82, line 18, strike ''; and'' and insert a period.

On page 82, strike lines 19 through 21.

On page 83, strike line 3.

On page 118, line 3, before ''equipment,'' insert ''integrated, interoperable emergency communications,''.

On page 120, line 18, after ''elements'', insert ''(including integrated, interoperable emergency communications)''.

On page 127, line 23, strike ''paragraph (1)'' and insert ''subsection (c)(1)(D)''.

On page 128, strike lines 5 through 20 and insert the following:

''(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in such reports, surveys, schedules, lists, or other data.

On page 134, line 25, strike ''be available'' and insert the following: ''be—

''(1) available''.

On page 135, line 2, strike the first period, the closing quotation marks, and the following period and insert ''; and''.

On page 135, between lines 2 and 3, insert the following:

''(2) apportioned in accordance with section 104(b)(5).''.

On page 147, after the matter following line 24, add the following:

On page 224, line 23, strike ''and''.

On page 226, line 10, strike ''(4)'' and insert ''(3)''.

On page 257, line 12, strike ''B'' and insert ''(B)''.

On page 260, strike lines 3 through 9 and insert the following:

(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; or

''(7) if the project or program involves the purchase of integrated, interoperable emergency communications equipment.''.

On page 261, between lines 5 and 6, insert the following:

(c) RESPONSIBILITY OF STATES.—

(1) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under section 149 of title 23, United States Code, have emission reduction strategies for fleets that are—

(A) used in construction projects located in nonattainment and maintenance areas; and

(B) funded under title 23, United States Code.

(2) EMISSION REDUCTION STRATEGIES.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary, shall develop a nonbinding list of emission reduction strategies and supporting technical information for each strategy, including—

(A) contract preferences;

(B) requirements for the use of anti-idling equipment;

(C) diesel retrofits; and

(D) such other matters as the Administrator of the Environmental Protection Agency, in consultation with the Secretary, determine to be appropriate.

(3) 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 emission reduction strategies described in paragraph (1).

On page 288, between lines 2 and 3, insert the following:

SEC. 1622. FUNDS FOR REBUILDING FISH STOCKS.

Section 105 of the Miscellaneous Appropriations and Offsets Act, 2004 (Division H of the Consolidated Appropriations Act, 2004 (Public Law 108–199)) is repealed.

Beginning on page 321, strike line 7 and all that follows through page 326, line 12 and insert the following:

Secretary.'';

(C) in paragraph (3)—

(i) in subparagraph (A), by striking ''under this title'' and inserting ''under this chapter and section 125(e)''; and

(ii) by adding at the end the following:

''(C) FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.—

''(i) IN GENERAL.—The Secretary shall establish a demonstration project under which all funds made available under this chapter for Indian reservation roads and for highway bridges located on Indian reservation roads as provided for in subparagraph (A) shall be made available, on the request of an affected Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), contracts and agreements for the planning, research, engineering, and construction described in that subparagraph.

''(ii) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (B), all funds for Indian reservation roads and for highway bridges located on Indian reservation roads to which clause (i) applies shall be paid without regard to the organizational level at which the Federal lands highway program has previously carried out the programs, functions, services, or activities involved.

''(iii) SELECTION OF PARTICIPATING TRIBES.—

''(I) PARTICIPANTS.—

''(aa) IN GENERAL.—In addition to Indian tribes or tribal organizations that, as of the date of enactment of this subparagraph, are contracting or compacting for any Indian reservation road function or program, for each fiscal year, the Secretary may select up to 15 Indian tribes from the applicant pool described in subclause (II) to participate in the demonstration project carried out under clause (i).

''(bb) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or activity to which this

title applies may form a consortium to be considered as a single Indian tribe for the purpose of becoming part of the applicant pool under subclause (II).

''(cc) FUNDING.—An Indian tribe participating in the pilot program under this subparagraph shall receive funding in an amount equal to the sum of the funding that the Indian tribe would otherwise receive in accordance with the funding formula established under the other provisions of this subsection, and an additional percentage of that amount equal to the percentage of funds withheld during the applicable fiscal year for the road program management costs of the Bureau of Indian Affairs under subsection (f)(1).

''(II) APPLICANT POOL.—The applicant pool described in this subclause shall consist of each Indian tribe (or consortium) that—

''(aa) has successfully completed the planning phase described in subclause (IV);

''(bb) has requested participation in the demonstration project under this subparagraph through the adoption of a resolution or other official action by the tribal governing body; and

''(cc) has demonstrated financial stability and financial management capability in accordance with subclause (III) during the 3-fiscal-year period immediately preceding the fiscal year for which participation under this subparagraph is being requested.

''(III) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—For the purpose of subclause (II), evidence that, during the 3-year period referred to in subclause (II)(cc), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

''(IV) PLANNING PHASE.—

''(aa) IN GENERAL.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall complete a planning phase that shall include legal and budgetary research and internal tribal government and organization preparation.

''(bb) ELIGIBILITY.—An Indian tribe (or consortium) described in item (aa) shall be eligible to receive a grant under this subclause to plan and negotiate participation in a project described in that item.

''(V) REPORT TO CONGRESS.—Not later than September 30, 2006, the Secretary shall submit to Congress a report describing the implementation of the demonstration project and any recommendations for improving the project.''; and

(D) in paragraph (4)—

(i) in subparagraph (B)—

(I) by striking ''(B) RESERVATION.—Of the amounts'' and all that follows through ''to replace,'' and inserting the following:

''(B) FUNDING.—

''(i) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other funds made available for Indian reservation roads for each fiscal year, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $15,000,000 for each of fiscal years 2004 through 2009 to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace,''; and

(II) by adding at the end the following:

''(ii) AVAILABILITY.—Funds made available to carry out this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter 1.''; and

(ii) by striking subparagraph (D) and inserting the following:

''(D) APPROVAL REQUIREMENT.—

''(i) IN GENERAL.—Subject to clause (ii), on request by an Indian tribe or the Secretary of the Interior, the Secretary may make funds available under this subsection for preliminary engineering for Indian reservation road bridge projects.

''(ii) CONSTRUCTION AND CONSTRUCTION ENGINEERING.—The Secretary may make funds available under clause (i) for construction and construction engineering only after approval by the Secretary of applicable plans, specifications, and estimates.''; and

(5) by adding at the end the following:

''(f) ADMINISTRATION OF INDIAN RESERVATION ROADS.—

''(1) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, for any fiscal year, not more than 6 percent of the contract authority amounts made available from the Highway Trust Fund to the Bureau of Indian Affairs under this title shall be used to pay the expenses incurred by the Bureau in administering the Indian reservation roads program (including the administrative expenses relating to individual projects associated with the Indian reservation roads program).

''(2) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribe or tribal organization may commence road and bridge construction under the Transportation Equity Act for the 21st Century (Public Law 105-178) or the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 that is funded through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) if the Indian tribe or tribal organization—

''(A) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

''(B) obtains the advance review of the plans and specifications from a licensed professional that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

''(C) provides a copy of the certification under subparagraph (B) to the Assistant Secretary for Indian Affairs.''.

(d) PLANNING AND AGENCY COORDINATION.—Section 204 of title 23, United States Code, is amended—

(1) in subsection (a)(1), by inserting ''refuge roads, recreation roads,'' after ''parkways,'';

(2) by striking subsection (b) and inserting the following:

''(b) USE OF FUNDS.—

''(1) IN GENERAL.—Funds available for public lands highways, recreation roads, park roads and parkways, forest highways, and Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay the cost of transportation planning, research, engineering, operation and maintenance of transit facilities, and construction of the highways, roads, parkways, forest highways, and transit facilities located on public land, national parks, and Indian reservations.

''(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a construction contract or other appropriate agreement with—

''(A) a State (including a political subdivision of a State); or

''(B) an Indian tribe.

''(3) INDIAN RESERVATION ROADS.—In the case of an Indian reservation road—

''(A) Indian labor may be used, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1); and

''(B) funds made available to carry out this section may be used to pay bridge preconstruction costs (including planning, design, and engineering).

''(4) FEDERAL EMPLOYMENT.—No maximum on Federal employment shall be applicable to construction or improvement of Indian reservation roads.

''(5) AVAILABILITY OF FUNDS.—Funds available under this section for each class of Federal lands highway shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, the areas served by the particular class of Federal lands highway.

''(6) RESERVATION OF FUNDS.—The Secretary of the Interior may reserve funds from administrative funds of the Bureau of Indian Affairs that are associated with the Indian reservation road program to finance the Indian technical centers authorized under section 504(b).''; and

(3) in subsection (k)(1)—

(A) in subparagraph (B)—

(i) by striking ''(2), (5),'' and inserting ''(2), (3), (5),''; and

(ii) by striking ''and'' after the semicolon;

(B) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(D) maintenance of public roads in national fish hatcheries under the jurisdiction of the United States Fish and Wildlife Service;

''(E) the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within a wildlife refuge; and

''(F) maintenance and improvement of recreational trails (except that expenditures on trails under this subparagraph shall not exceed 5 percent of available funds for each fiscal year).''.

(e) MAINTENANCE OF INDIAN RESERVATION ROADS.—Section 204(c) of title 23, United States Code, is amended by striking the second and third sentences and inserting the following: ''Notwithstanding any other provision of this title, of the amount of funds apportioned for Indian reservation roads from the Highway Trust Fund, an Indian tribe may expend for the purpose of maintenance not more than the greater of $250,000 or 25 percent of the apportioned amount. The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. The Secretary shall ensure that funding made available under this subsection for maintenance of Indian reservation roads for each fiscal year is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.''.

On page 387, line 8, strike ''I and II'' and insert ''I, II, and III''.

On page 389, between lines 15 and 16, insert the following:

SEC. 1823. MULTISTATE INTERNATIONAL CORRIDOR DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a program to develop international trade corridors to facilitate the movement of freight from international ports of entry and inland ports through and to the interior of the United States.

(b) ELIGIBLE RECIPIENTS.—State transportation departments and metropolitan planning organizations shall be eligible to receive and administer funds provided under the program.

(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under this program

for any activity eligible for funding under title 23, United States Code, including multistate highway and multistate multimodal planning and project construction.

(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135 of title 23, United States Code.

(e) SELECTION CRITERIA.—The Secretary shall only select projects for corridors—

(1) that have significant levels or increases in truck and traffic volume relating to international freight movement;

(2) connect to at least 1 international terminus or inland port;

(3) traverse at least 3 States; and

(4) are identified by section 115(c) of the Intermodal Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2032).

(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

(1) encourage and enable States and other jurisdictions to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

(2) give priority to studies that emphasize multimodal planning, including planning for operational improvements that increase mobility, freight productivity, access to marine ports, safety, and security while enhancing the environment.

(g) FEDERAL SHARE.—The Federal share required for any study carried out under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter I of title 23, United States Code.

SEC. 1824. AUTHORIZATION OF CONTRACT AUTHORITY FOR STATES WITH INDIAN RESERVATIONS.

Section 1214(d) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended—

(1) in paragraph (1), by inserting ''(except Arizona)'' after ''each State''; and

(2) in paragraph (5)(A), by striking ''$1,500,000 for each of fiscal years 1998 through 2003'' and inserting ''$1,800,000 for each of fiscal years 2004 through 2009''.

On page 398, strike lines 5 through 11 and insert the following:

further development and deployment of techniques to prevent and mitigate alkali silica reactivity;

(H) $2,000,000 for fiscal year 2005 shall be remain available until expended for asphalt and asphalt-related reclamation research at the South Dakota School of Mines; and

(I) $3,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out section 502(f)(3) of title 23, United States Code.

On page 403, in the matter following line 2, strike the item relating to section 511 and insert the following:

''511. Multistate corridor operations and management.
''512. Transportation analysis simulation system.''.

On page 404, line 7, before ''communications'' insert ''integrated, interoperable emergency''.

On page 420, line 23, strike ''enhanced'' and insert ''integrated, interoperable emergency''.

On page 476, line 18, strike the period and closing quotation marks.

On page 476, between lines 18 and 19, insert the following:

''§ 512. Transportation analysis simulation system

''(a) CONTINUATION OF TRANSIMS DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary shall continue the deployment of the advanced transportation model known as the 'Transportation Analysis Simulation System' (referred to in this section as 'TRANSIMS') developed by the Los Alamos National Laboratory.

''(2) REQUIREMENTS AND CONSIDERATIONS.—In carrying out paragraph(1), the Secretary shall—

''(A) further improve TRANSIMS to reduce the cost and complexity of using the TRANSIMS;

''(B) continue development of TRANSIMS for applications to facilitate transportation planning, regulatory compliance, and response to natural disasters and other transportation disruptions; and

''(C) assist State transportation departments and metropolitan planning organizations, especially smaller metropolitan planning organizations, in the implementation of TRANSIMS by providing training and technical assistance.

''(b) ELIGIBLE ACTIVITIES.—The Secretary shall use funds made available to carry out this section—

''(1) to further develop TRANSIMS for additional applications, including—

''(A) congestion analyses;

''(B) major investment studies;

''(C) economic impact analyses;

''(D) alternative analyses;

''(E) freight movement studies;

''(F) emergency evacuation studies;

''(G) port studies; and

''(H) airport access studies;

''(2) provide training and technical assistance with respect to the implementation and application of TRANSIMS to States, local governments, and metropolitan planning organizations with responsibility for travel modeling;

''(3) develop methods to simulate the national transportation infrastructure as a single, integrated system for the movement of individuals and goods;

''(4) provide funding to State transportation departments and metropolitan planning organizations for implementation of TRANSIMS.

''(c) ALLOCATION OF FUNDS.—Of the funds made available to carry out this section for each fiscal year, not less than 15 percent shall be allocated for activities described in subsection (b)(3).

''(d) FUNDING.—Of the amounts made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for each of fiscal years 2004 through 2009, the Secretary shall use $1,000,000 to carry out this section.

''(e) AVAILABILITY OF FUNDS.—Funds made available under this section shall be available to the Secretary through the Transportation Planning, Research, and Development Account of the Office of the Secretary.''.

On page 489, after line 23, add the following:

SEC. 2105. TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Section 5117(b)(3) of the Transportation Equity Act for the 21st Century (112 Stat. 449; 112 Stat. 864; 115 Stat. 2330) is amended—

(1) in subparagraph (B)—

(A) in clause (i)—

(i) in the first sentence—

(I) by striking ''Build an'' and inserting ''Build or integrate an''; and

(II) by striking ''$2,000,000'' and inserting ''$2,500,000''; and

(ii) in the second sentence—

(I) by striking ''300,000 and that'' and inserting ''300,000,''; and

(II) by inserting before the period at the end the following: '', and includes major transportation corridors serving that metropolitan area'';

(B) in clause (ii), by striking all that follows ''will be'' and inserting ''reinvested in the intelligent transportation infrastructure system.'';

(C) by striking clause (iii); and

(D) by redesignating clauses (iv) and (v) as clauses (iii) and (iv), respectively;

(2) in subparagraph (C)(ii), by striking ''July 1, 2002'' and inserting ''the date that is 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003'';

(3) in subparagraph (E), by striking clause (ii) and inserting the following:

''(ii) The term ''follow-on deployment areas'' means the metropolitan areas of Albany, Atlanta, Austin, Baltimore, Birmingham, Boston, Burlington Vermont, Charlotte, Chicago, Cleveland, Columbus, Dallas/Ft. Worth, Denver, Detroit, Greensboro, Hartford, Houston, Indianapolis, Jacksonville, Kansas City, Las Vegas, Los Angeles, Louisville, Miami, Milwaukee, Minneapolis-St. Paul, Nashville, New Orleans, New York/Northern New Jersey, Norfolk, Northern Kentucky/Cincinnati, Oklahoma City, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, Providence, Raleigh, Richmond, Sacramento, Salt Lake, San Diego, San Francisco, San Jose, St. Louis, Seattle, Tampa, Tucson, Tulsa, and Washington, District of Columbia.'';

(4) in subparagraph (F)—

(A) by striking ''Of the amounts'' and inserting the following:

''(i) THIS ACT.—Of the amounts''; and

(B) by adding at the end the following:

''(ii) SAFETEA.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $5,000,000 for each fiscal year to carry out this paragraph.

''(iii) AVAILABILITY; NO REDUCTION OR SETASIDE.—Amounts made available by this subparagraph—

''(I) shall remain available until expended; and

''(II) shall not be subject to any reduction or setaside.''; and

(5) by adding at the end the following:

''(H) USE OF RIGHTS-OF-WAY.—

''(i) IN GENERAL.—An intelligent transportation system project described in paragraph (3) or (6) that involves privately owned intelligent transportation system components and is carried out using funds made available from the Highway Trust Fund shall not be subject to any law (including a regulation) of a State or political subdivision of a State prohibiting or regulating commercial activities in the rights-of-way of a highway for which Federal-aid highway funds have been used for planning, design, construction, or maintenance, if the Secretary determines that such use is in the public interest.

''(ii) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph affects the authority of a State or political subdivision of a State to regulate highway safety.''.

(b) CONFORMING AMENDMENT.—Section 5204 of the Transportation Equity Act for the 21st Century (112 Stat. 453) is amended by striking subsection (k) (112 Stat. 2681–478).

On page 874, line 22, strike ''and''.

On page 875, strike lines 3 through 5.

On page 995, line 20, insert ''(a) IN GENERAL.—'' before ''Section''.

On page 996, between lines 5 and 6, insert the following:

(b) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 3 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777b) is amended in the first sentence—

(A) by striking ''Sport Fish Restoration Account'' and inserting ''Sport Fish Restoration Trust Fund''; and

(B) by striking ''that Account'' and inserting ''that Trust Fund, except as provided in section 9504(c) of the Internal Revenue Code of 1986''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on October 1, 2004.

On page 1020, between lines 9 and 10, insert the following:

SEC. 4663. USE OF CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT FUNDS FOR BOSTON TO PORTLAND PASSENGER RAIL SERVICE.

Notwithstanding any other provision of law, funds authorized to be appropriated under section 1101(5) that are made available to the State of Maine may be used to support, through December 15, 2006, the operation of passenger rail service between Boston, Massachusetts, and Portland, Maine.

On page 1310, after line 4, add the following:

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 7001. REIMBURSEMENT OF CERTAIN TRANSPORTATION COSTS INCURRED BY MEMBERS OF THE UNITED STATES ARMED FORCES ON REST AND RECUPERATION LEAVE.

The Secretary of Defense shall reimburse a member of the United States Armed Forces (out of funds available for the Armed Forces for operation and maintenance for the relevant fiscal year) for transportation expenses incurred by such member for 1 round trip by such member between 2 locations within the United States in connection with leave taken under the Central Command Rest and Recuperation Leave Program during the period beginning on September 25, 2003, and ending on December 18, 2003.

TITLE VIII—SOLID WASTE DISPOSAL

SEC. 8001. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) IN GENERAL.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following:

''SEC. 6005. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

''(a) DEFINITIONS.—In this section:

''(1) AGENCY HEAD.—The term 'agency head' means—

''(A) the Secretary of Transportation; and

''(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

''(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

''(A) involves the procurement of cement or concrete; and

''(B) is carried out in whole or in part using Federal funds.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

''(A) ground granulated blast furnace slag;

''(B) coal combustion fly ash; and

''(C) 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.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

''(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 6004 the following:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.''.

SEC. 8002. USE OF GRANULAR MINE TAILINGS.

(a) IN GENERAL.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) (as amended by section 8001(a)) is amended by adding at the end the following:

''SEC. 6006. USE OF GRANULAR MINE TAILINGS.

''(a) MINE TAILINGS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for—

''(A) cement or concrete projects; and

''(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

''(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

''(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

''(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

''(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

''(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

''(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 8001(b)) is amended by adding after the item relating to section 6005 the following:

''Sec. 6006. Use of granular mine tailings.''.

On page 738, strike lines 5 through 12 and insert the following:

motor vehicles that became effective by December 31, 2002.

''(ii) For each of fiscal years 2004 through 2009, the Secretary shall, after making grants under clause (i) of this subparagraph, make a one-time grant to each State that either enacts for the first time after December 31, 2002, and has in effect

On page 792, between lines 15 and 16, insert the following:

PART 3—MISCELLANEOUS PROVISIONS

SEC. 4171. DRIVER LICENSING AND EDUCATION.

(a) NATIONAL OFFICE OF DRIVER LICENSING AND EDUCATION.—Section 105 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(f)(1) There is a National Office of Driver Licensing and Education in the National Highway Traffic Safety Administration.

''(2) The head of the National Office of Driver Licensing and Education is the Director.

''(3) The functions of the National Office of Driver Licensing and Education are as follows:

''(A) To provide States with services for coordinating the motor vehicle driver training and licensing programs of the States.

''(B) To develop and make available to the States a recommended comprehensive model for motor vehicle driver education and graduated licensing that incorporates the best practices in driver education and graduated licensing, including best practices with respect to—

''(i) vehicle handling and crash avoidance;

''(ii) driver behavior and risk reduction;

''(iii) roadway features and associated safety implications;

''(iv) roadway interactions involving all types of vehicles and road users, such as car-truck and pedestrian-car interactions;

''(v) parent education; and

''(vi) other issues identified by the Director.

''(C) To carry out such research (pursuant to cooperative agreements or otherwise) and undertake such other activities as the Director determines appropriate to develop and, on an ongoing basis, improve the recommended comprehensive model.

''(D) To provide States with technical assistance for the implementation and deployment of the motor vehicle driver education and licensing comprehensive model recommended under subparagraph (B).

''(E) To develop and recommend to the States methods for harmonizing the presentation of motor vehicle driver education and licensing with the requirements of multistage graduated licensing systems, including systems described in section 410(c)(4) of title 23, and to demonstrate and evaluate the effectiveness of those methods in selected States.

''(F) To assist States with the development and implementation of programs to certify driver education instructors, including the development and implementation of proposed uniform certification standards.

''(G) To provide States with financial assistance under section 412 of title 23 for—

''(i) the implementation of the motor vehicle driver education and licensing comprehensive model recommended under subparagraph (B);

''(ii) the establishment or improved administration of multistage graduated licensing systems; and

''(iii) the support of other improvements in motor vehicle driver education and licensing programs.

''(H) To evaluate the effectiveness of the comprehensive model recommended under subparagraph (B).

''(I) To examine different options for delivering driver education in the States.

''(J) To perform such other functions relating to motor vehicle driver education or licensing as the Secretary may require.

''(4) Not later than 42 months after the date of the enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Director shall submit to Congress a report on the progress made by the National Office of Driver Licensing and Education with respect to the functions under paragraph (3).''.

(b) GRANT PROGRAM FOR IMPROVEMENT OF DRIVER EDUCATION AND LICENSING.—

(1) AUTHORITY.—

(A) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

''SEC. 412. DRIVER EDUCATION AND LICENSING.

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary shall carry out a program to provide States, by grant, with financial assistance to support the improvement of motor vehicle driver education programs and the establishment and improved administration of graduated licensing systems, including systems described in section 410(c)(4) of this title.

''(2) ADMINISTRATIVE OFFICE.—The Secretary shall administer the program under this section through the Director of the National Office of Driver Licensing and Education.

''(b) ELIGIBILITY REQUIREMENTS.—

''(1) REGULATIONS.—The Secretary shall prescribe in regulations the eligibility requirements, application and approval procedures and standards, and authorized uses of grant proceeds for the grant program under this section. The regulations shall, at a minimum, authorize use of grant proceeds for the following activities:

''(A) Quality assurance testing, including follow-up testing to monitor the effectiveness of—

''(i) driver licensing and education programs;

''(ii) instructor certification testing; and

''(iii) other statistical research designed to evaluate the performance of driver education and licensing programs.

''(B) Improvement of motor vehicle driver education curricula.

''(C) Training of instructors for motor vehicle driver education programs.

''(D) Testing and evaluation of motor vehicle driver performance.

''(E) Public education and outreach regarding motor vehicle driver education and licensing.

''(F) Improvements with respect to State graduated licensing programs, as well as related enforcement activities.

''(2) CONSULTATION REQUIREMENT.—In prescribing the regulations, the Secretary shall consult with the following:

''(A) The Administrator of the National Highway Traffic Safety Administration.

''(B) The heads of such other departments and agencies of the United States as the Secretary considers appropriate on the basis of relevant interests or expertise.

''(C) Appropriate officials of the governments of States and political subdivisions of States.

''(D) Other relevant experts.

''(c) MAXIMUM AMOUNT OF GRANT.—The maximum amount of a grant of financial assistance for a program, project, or activity under this section may not exceed 75 percent of the total cost of such program, project, or activity.''.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''412. Driver education and licensing.''.

(2) TIME FOR PROMULGATION OF REGULATIONS.—The Secretary of Transportation shall promulgate the regulations under section 412(b) of title 23, United States Code (as added by paragraph (1)), not later than October 1, 2005.

(c) GRANT PROGRAM FOR PUBLIC AWARENESS OF ORGAN DONATION THROUGH DRIVER LICENSING PROGRAMS.—

(1) AUTHORITY.—

(A) IN GENERAL.—Chapter 4 of title 23, United States Code (as amended by subsection (b)), is further amended by adding at the end the following new section:

''SEC. 413. ORGAN DONATION THROUGH DRIVER LICENSING.

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary shall carry out a program to provide eligible recipients, by grant, with financial assistance to carry out campaigns to increase public awareness of, and training on, authority and procedures under State law to provide for the donation of organs through a declaration recorded on a motor vehicle driver license.

''(2) ADMINISTRATIVE OFFICE.—The Secretary shall administer the program under this section through the Director of the National Office of Driver Licensing and Education.

''(b) ELIGIBILITY REQUIREMENTS.—

''(1) REGULATIONS.—The Secretary shall prescribe in regulations the eligibility requirements, application and approval procedures and standards, and authorized uses of grant proceeds for the grant program under this section.

''(2) CONSULTATION REQUIREMENT.—In prescribing the regulations, the Secretary shall consult with the following:

''(A) The Administrator of the National Highway Traffic Safety Administration.

''(B) The heads of such other departments and agencies of the United States as the Secretary considers appropriate on the basis of relevant interests or expertise.

''(C) Appropriate officials of the governments of States and political subdivisions of States.

''(D) Representatives of private sector organizations recognized for relevant expertise.''.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''413. Organ donation through driver licensing.''.

(2) TIME FOR PROMULGATION OF REGULATIONS.—The Secretary of Transportation shall promulgate the regulations under section 413(b) of title 23, United States Code (as added by paragraph (1)), not later than October 1, 2005.

(d) STUDY OF NATIONAL DRIVER EDUCATION STANDARDS.—

(1) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall carry out a study to determine whether the establishment and imposition of nationwide minimum standards of motor vehicle driver education would improve national highway traffic safety or the performance and legal compliance of novice drivers.

(2) TIME FOR COMPLETION OF STUDY.—The Secretary shall complete the study not later than 2 years after the date of the enactment of this Act.

(3) REPORT.—The Secretary shall publish a report on the results of the study under this section not later than 2 years after the study is completed.

(e) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts available to carry out section 403 of title 23, United States Code, for each of the fiscal years 2005 through 2010, $5,000,000 may be made available for each such fiscal year to carry out sections 412 and 413 of title 23, United States Code (as added by subsections (b) and (c), respectively).

SEC. 4172. AMENDMENT OF AUTOMOBILE INFORMATION DISCLOSURE ACT.

(a) SAFETY LABELING REQUIREMENT.—Section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232) is amended by adding at the end the following:

''(g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the

New Car Assessment Program, information about safety ratings that—

''(1) includes a graphic depiction of the number of stars that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion from stars indicating the unattained safety rating;

''(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests), including statements that—

''(A) frontal impact crash test ratings are based on risk of head and chest injury;

''(B) side impact crash test ratings are based on risk of chest injury; and

''(C) rollover resistance ratings are based on risk of rollover in the event of a single automobile crash;

''(3) is presented in a legible, visible, and prominent fashion and covers at least—

''(A) 8 percent of the total area of the label; or

''(B) an area with a minimum length of 4 ½ inches and a minimum height of 3 ½ inches; and

''(4) contains a heading titled 'Government Safety Information' and a disclaimer including the following text: 'Star ratings for frontal impact crash tests can only be compared to other vehicles in the same weight class and those plus or minus 250 pounds. Side impact and rollover ratings can be compared across all vehicle weights and classes. For more information on safety and testing, please visit http://www.nhtsa.dot.gov'; and

''(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.''.

(b) REGULATIONS.—Not later than January 1, 2005, the Secretary of Transportation shall prescribe regulations to implement the labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)).

(c) CONFORMING AND TECHNICAL AMENDMENTS.—Section 3 of such Act is further amended—

(1) in subsection (e), by striking ''and'' after the semicolon; and

(2) in subsection (f)—

(A) by adding ''and'' at the end of paragraph (3); and

(B) by striking the period at the end and inserting a semicolon.

(d) APPLICABILITY.—The labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)), and the regulations prescribed under subsection (b), shall apply to new automobiles delivered on or after—

(1) September 1, 2005, if the regulations under subsection (b) are prescribed not later than August 31, 2004; or

(2) September 1, 2006, if the regulations under subsection (b) are prescribed after August 31, 2004.

SEC. 4173. CHILD SAFETY.

(a) INCORPORATION OF CHILD DUMMIES IN SAFETY TESTS.—

(1) RULEMAKING REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall conduct a rulemaking to increase utilization of child dummies, including Hybrid-III child dummies, in motor vehicle safety tests, including crash tests, conducted by the Administration.

(2) CRITERIA.—In conducting the rulemaking under subsection (a), the Administrator shall select motor vehicle safety tests in which the inclusion of child dummies will lead to—

(A) increased understanding of crash dynamics with respect to children; and

(B) measurably improved child safety.

(3) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Transportation shall publish a report regarding the implementation of this section.

(b) CHILD SAFETY IN ROLLOVER CRASHES.—

(1) CONSUMER INFORMATION PROGRAM.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Transportation shall implement a consumer information program relating to child safety in rollover crashes. The Secretary shall make information related to the program available to the public following completion of the program.

(2) CHILD DUMMY DEVELOPMENT.—

(A) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall initiate the development of a biofidelic child crash test dummy capable of measuring injury forces in a simulated rollover crash.

(B) REPORTS.—The Secretary shall submit to Congress a report on progress related to such development—

(i) not later than 1 year after the date of the enactment of this Act; and

(ii) not later than 3 years after the date of the enactment of this Act.

(c) REPORT ON ENHANCED VEHICLE SAFETY TECHNOLOGIES.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report that describes, evaluates, and determines the relative effectiveness of—

(1) currently available and emerging technologies, including auto-reverse functions and child-safe window switches, that are designed to prevent and reduce the number of injuries and deaths to children left unattended inside parked motor vehicles, including injuries and deaths that result from hyperthermia or are related to power windows or power sunroofs; and

(2) currently available and emerging technologies that are designed to improve the performance of safety belts with respect to the safety of occupants aged between 4 and 8 years old.

(d) COMPLETION OF RULEMAKING REGARDING POWER WINDOWS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) complete the rulemaking initiated by the National Highway Traffic Safety Administration that is ongoing on the date of the enactment of this Act and relates to a requirement that window switches be designed to reduce the accidental closing by children of power windows; and

(2) issue performance-based regulations to take effect not later than September 1, 2006, requiring that window switches or related technologies be designed to prevent the accidental closing by children of power windows.

(e) DATABASE ON INJURIES AND DEATHS IN NONTRAFFIC, NONCRASH EVENTS.—

(1) IN GENERAL.—The Secretary of Transportation shall establish a new database of, and collect data regarding, injuries and deaths in nontraffic, noncrash events involving motor vehicles. The database shall include information regarding—

(A) the number, types, and proximate causes of injuries and deaths resulting from such events;

(B) the characteristics of motor vehicles involved in such events;

(C) the characteristics of the motor vehicle operators and victims involved in such events; and

(D) the presence or absence in motor vehicles involved in such events of advanced technologies designed to prevent such injuries and deaths.

(2) RULEMAKING.—The Secretary shall conduct a rulemaking regarding how to structure and compile the database.

(3) AVAILABILITY.—The Secretary shall make the database available to the public.

SEC. 4174. SAFE INTERSECTIONS.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

''§ 39. Traffic signal preemption transmitters

''(a) OFFENSES.—

''(1) SALE.—A person who provides for sale to unauthorized users a traffic signal preemption transmitter in or affecting interstate or foreign commerce shall be fined not more than $10,000, imprisoned not more than 1 year, or both.

''(2) POSSESSION.—A person who is an unauthorized user in possession of a traffic signal preemption transmitter in or affecting interstate or foreign commerce shall be fined not more than $10,000, imprisoned not more than 6 months, or both.

''(b) DEFINITIONS.—In this section, the following definitions apply:

''(1) TRAFFIC SIGNAL PREEMPTION TRANSMITTER.—The term 'traffic signal preemption transmitter' means any device or mechanism that can change a traffic signal's phase.

''(2) UNAUTHORIZED USER.—The term 'unauthorized user' means a user of a traffic signal preemption transmitter who is not a government approved user.''.

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

''39. Traffic signal preemption transmitters.''.

SEC. 4175. STUDY ON INCREASED SPEED LIMITS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall conduct a study to examine the effects of increased speed limits enacted by States after 1995.

(2) REQUIREMENTS.—The study shall collect empirical data regarding—

(A) increases or decreases in driving speeds on Interstate highways since 1995;

(B) correlations between changes in driving speeds and accident, injury, and fatality rates;

(C) correlations between posted speed limits and observed driving speeds;

(D) the overall impact on motor vehicle safety resulting from the repeal of the national maximum speed limit in 1995; and

(E) such other matters as the Secretary determines to be appropriate.

(b) REPORT.—Not later than 1 year after the date of completion of the study under subsection (a), the Secretary shall submit to Congress a report that describes the results of the study.

Beginning on page 1005, line 22, strike all through page 1020, line 9, and insert the following:

SEC. 4602. ESTABLISHMENT OF BUILD AMERICA CORPORATION.

There is established a nonprofit corporation, to be known as the ''Build America Corporation''. The Build America Corporation is not an agency or establishment of the United States Government. The purpose of the Corporation is to support qualified projects described in section 4603(c)(2) through the issuance of Build America bonds. The Corporation shall be subject, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit.

SEC. 4603. FEDERAL BONDS FOR TRANSPORTATION INFRASTRUCTURE.

(a) USE OF BOND PROCEEDS.—The proceeds from the sale of—

(1) any bonds authorized, issued, or guaranteed by the Federal Government that are available to fund passenger rail projects pursuant to any Federal law (enacted before, on, or after the date of the enactment of this Act), and

(2) any Build America bonds issued by the Build America Corporation as authorized by section 4602,

may be used to fund a qualified project if the Secretary of Transportation determines that the qualified project is a cost-effective alternative for efficiently maximizing mobility of individuals and goods.

(b) COMPLIANCE OF BENEFICIARIES WITH CERTAIN STANDARDS.—A recipient of proceeds of a grant, loan, Federal tax-credit bonds, or any other form of financial assistance provided under this title shall comply with the standards described in section 24312 of title 49, United States Code, as in effect on June 25, 2003, with respect to any qualified project described in subsection (c)(1) in the same manner that the National Passenger Railroad Corporation is required to comply with such standards for construction work financed under an agreement entered into under section 24308(a) of such title.

(c) QUALIFIED PROJECT DEFINED.—In this section—

(1) IN GENERAL.—Except as provided in paragraph (2), the term ''qualified project'' means any transportation infrastructure project of any governmental unit or other person that is proposed by a State, including a highway project, a transit system project, a railroad project, an airport project, a port project, and an inland waterways project.

(2) BUILD AMERICA CORPORATION PROJECTS.—

(A) IN GENERAL.—With respect to any Build America bonds issued by the Build America Corporation as authorized by section 4602, the term ''qualified project'' means any—

(i) qualified highway project,

(ii) qualified public transportation project, and

(iii) congestion relief project,

proposed by 1 or more States and approved by the Build America Corporation, which meets the requirements under clauses (i), (ii), and (iii) of subparagraph (D).

(B) QUALIFIED HIGHWAY PROJECT.—The term ''qualified highway project'' means a project for highway facilities or other facilities which are eligible for assistance under title 23, United States Code.

(C) QUALIFIED PUBLIC TRANSPORTATION PROJECT.—The term ''qualified public transportation project'' means a project for public transportation facilities or other facilities which are eligible for assistance under chapter 53 of title 49, United States Code.

(D) CONGESTION RELIEF PROJECT.—The term ''congestion relief project'' means an intermodal freight transfer facility, freight rail facility, freight movement corridor, intercity passenger rail or facility, intercity bus vehicle or facility, border crossing facility, or other public or private facility approved as a congestion relief project by the Secretary of Transportation. In making such approvals, the Secretary of Transportation shall—

(i) consider the economic, environmental, mobility, and national security improvements to be realized through the project, and

(ii) give preference to projects with national or regional significance, including any projects sponsored by a coalition of States or a combination of States and private sector entities, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(D) ADDITIONAL REQUIREMENTS FOR QUALIFIED PROJECTS.—For purposes of subparagraph (A)—

(i) COSTS OF QUALIFIED PROJECTS.—The requirement of this clause is met if the costs of the qualified project funded by Build America bonds only relate to capital investments in depreciable assets and do not include any costs relating to operations, maintenance, or rolling stock.

(ii) APPLICABILITY OF FEDERAL LAW.—The requirement of this clause is met if the requirements of any Federal law, including titles 23, 40, and 49 of the United States Code, which would otherwise apply to projects to which the United States is a party or to funds made available under such law and projects assisted with those funds are applied to—

(I) funds made available under Build America bonds for similar qualified projects, and

(II) similar qualified projects assisted by the Build America Corporation through the use of such funds.

(iii) UTILIZATION OF UPDATED CONSTRUCTION TECHNOLOGY FOR QUALIFIED PROJECTS.—The requirement of this clause is met if the appropriate State agency relating to the qualified project has updated its accepted construction technologies to match a list prescribed by the Secretary of Transportation and in effect on the date of the approval of the project as a qualified project.

PART 2—RAILROAD TRACK MODERNIZATION

SEC. 4631. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. 4632. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''Sec.

''22301. Capital grants for railroad track.

''§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroad track (including roadbed, bridges, and related track structures) of class II and class III railroads. Such grants shall be for rehabilitating, preserving, or improving track used primarily for freight transportation to a standard ensuring that the track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track to handle 286,000 pound rail cars. Grants may be provided under this chapter—

''(A) directly to the class II or class III railroad; or

''(B) with the concurrence of the class II or class III railroad, to a State or local government.

''(2) STATE COOPERATION.—Class II and class III railroad applicants for a grant under this chapter are encouraged to utilize the expertise and assistance of State transportation agencies in applying for and administering such grants. State transportation agencies are encouraged to provide such expertise and assistance to such railroads.

''(3) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

''(i) condition the award of a grant to a railroad on reasonable assurances by the railroad that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services by the railroad to which the grant is to be awarded;

''(iii) ensure that consideration is given to projects that are part of a State-sponsored rail plan; and

''(iv) ensure that all such grants are awarded on a competitive basis.

''(b) MAXIMUM FEDERAL SHARE.—The maximum Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) PROJECT ELIGIBILITY.—For a project to be eligible for assistance under this section the track must have been operated or owned by a class II or class III railroad as of the date of the enactment of the Railroad Track Modernization Act of 2004.

''(d) USE OF FUNDS.—Grants provided under this section shall be used to implement track capital projects as soon as possible. In no event shall grant funds be contractually obligated for a project later than the end of the third Federal fiscal year following the year in which the grant was awarded. Any funds not so obligated by the end of such fiscal year shall be returned to the Secretary for reallocation.

''(e) ADDITIONAL PURPOSE.—In addition to making grants for projects as provided in subsection (a), the Secretary may also make grants to supplement direct loans or loan guarantees made under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(d)), for projects described in the last sentence of section 502(d) of such title. Grants made under this subsection may be used, in whole or in part, for paying credit risk premiums, lowering rates of interest, or providing for a holiday on principal payments.

''(f) EMPLOYEE PROTECTION.—The Secretary shall require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

''(g) LABOR STANDARDS.—

''(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

''(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SEC. 4633. REGULATIONS.

(a) REGULATIONS.—The Secretary of Transporation shall prescribe under subsection (a)(3) of section 22301 of title 49, United States Code (as added by section

4601), interim and final regulations for the administration of the grant program under such section as follows:

(1) INTERIM REGULATIONS.—The Secretary shall prescribe the interim regulations to implement the program not later than December 31, 2003.

(2) FINAL REGULATIONS.—The Secretary shall prescribe the final regulations not later than October 1, 2004.

(b) INAPPLICABILITY OF RULEMAKING PROCEDURE TO INTERIM REGULATIONS.—Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of an interim regulation or to any amendment of such an interim regulation.

(c) CRITERIA.—The requirement for the establishment of criteria under subparagraph (B) of section 22301(a)(3) of title 49, United States Code, applies to the interim regulations as well as to the final regulations.

SEC. 4634. STUDY OF GRANT-FUNDED PROJECTS.

(a) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall conduct a study of the projects carried out with grant assistance under section 22301 of title 49, United States Code (as added by section 4601), to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multimodal transportation system.

(b) REPORT.—Not later than March 31, 2004, the Secretary shall submit to Congress a report on the results of the study under subsection (a). The report shall include any recommendations that the Secretary considers appropriate regarding the eligibility of light density rail networks for Federal infrastructure financing.

SEC. 4635. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation $350,000,000 for each of fiscal years 2004, 2005, and 2006 for carrying out section 22301 of title 49, United States Code (as added by section 4601).

PART 3—OTHER RAIL TRANSPORTATION-RELATED PROVISIONS

SEC. 4661. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS.

(a) ESTABLISHMENT OF PROGRAM.—

(1) PROGRAM REQUIREMENTS.—Chapter 201 of title 49, United States Code, is amended by adding at the end of subchapter II the following:

"§ 20154. Capital grants for rail line relocation projects

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation projects.

''(b) ELIGIBILITY.—A State is eligible for a grant under this section for any project for the improvement of the route or structure of a rail line passing through a municipality of the State that—

''(1) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, or economic development in the municipality;

''(2) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass; and

''(3) meets the costs-benefits requirement set forth in subsection (c).

''(c) COSTS-BENEFITS REQUIREMENT.—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 relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

''(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, and area commerce if the rail line were not so relocated.

''(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, and area commerce.

''(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

''(d) CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.—In addition to considering the relationship of benefits to costs in determining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

''(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

''(2) The requirement and limitation relating to allocation of grant funds provided in subsection (e).

''(3) Equitable treatment of the various regions of the United States.

''(e) ALLOCATION REQUIREMENTS.—

''(1) GRANTS NOT GREATER THAN $20,000,000.—At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each.

''(2) LIMITATION PER PROJECT.—Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any 1 project in that fiscal year.

''(f) FEDERAL SHARE.—The total amount of a grant awarded under this section for a rail line relocation project shall be 90 percent of the shared costs of the project, as determined under subsection (g)(4).

''(g) STATE SHARE.—

''(1) PERCENTAGE.—A State shall pay 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.

''(2) FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.

''(3) IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State are as follows:

''(A) A contribution of real property or tangible personal property (whether provided by the State or a person for the State).

''(B) A contribution of the services of employees of the State, calculated on the basis of costs incurred by the State for the pay and benefits of the employees, but excluding overhead and general administrative costs.

''(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

''(4) COSTS NOT SHARED.—

''(A) IN GENERAL.—For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds or in-kind contribution that a source other than the municipality makes available for the use of the municipality without imposing at least 1 of the following conditions:

''(i) The condition that the municipality use the funds or contribution only for the project.

''(ii) The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.

''(B) DETERMINATIONS OF THE SECRETARY.—The Secretary shall determine the amount of the costs, if any, that are not shared costs under this paragraph and the total amount of the shared costs. A determination of the Secretary shall be final.

''(h) MULTISTATE AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if—

''(1) the project will benefit each of the States entering into the agreement; and

''(2) the agreement is not a violation of a law of any such State.

''(i) REGULATIONS.—The Secretary shall prescribe regulations for carrying out this section.

''(j) STATE DEFINED.—In this section, the term 'State' includes, except as otherwise specifically provided, a political subdivision of a State.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for use in carrying out this section $350,000,000 for each of the fiscal years 2004 through 2008.''.

(2) CLERICAL AMENDMENT.—The chapter analysis for such chapter is amended by adding at the end the following:

''20154. Capital grants for rail line relocation projects.''.

(b) REGULATIONS.—

(1) INTERIM REGULATIONS.—Not later than October 1, 2003, the Secretary of Transportation shall issue temporary regulations to implement the grant program under section 20154 of title 49, United States Code, as added by subsection (a). Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of a temporary regulation under this subsection or of any amendment of such a temporary regulation.

(2) FINAL REGULATIONS.—Not later than April 1, 2004, the Secretary shall issue final regulations implementing the program.

On page 738, strike lines 5 through 12 and insert the following:

motor vehicles that became effective by December 31, 2002.

''(ii) For each of fiscal years 2004 through 2009, the Secretary shall, after making grants under clause (i) of this subparagraph, make a one-time grant to each State that either enacts for the first time after December 31, 2002, and has in effect

Beginning on page 1005, line 22, strike all through page 1020, line 9, and insert the following:

SEC. 4602. ESTABLISHMENT OF BUILD AMERICA CORPORATION.

There is established a nonprofit corporation, to be known as the ''Build America Corporation''. The Build America Corporation is not an agency or establishment of the United States Government. The purpose of the Corporation is to support qualified projects described in section 4603(c)(2) through the issuance of Build America bonds. The Corporation shall be subject, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit.

SEC. 4603. FEDERAL BONDS FOR TRANSPORTATION INFRASTRUCTURE.

(a) USE OF BOND PROCEEDS.—The proceeds from the sale of—

(1) any bonds authorized, issued, or guaranteed by the Federal Government that are available to fund passenger rail projects pursuant to any Federal law (enacted before, on, or after the date of the enactment of this Act), and

(2) any Build America bonds issued by the Build America Corporation as authorized by section 4602,

may be used to fund a qualified project if the Secretary of Transportation determines that

the qualified project is a cost-effective alternative for efficiently maximizing mobility of individuals and goods.

(b) COMPLIANCE OF BENEFICIARIES WITH CERTAIN STANDARDS.—A recipient of proceeds of a grant, loan, Federal tax-credit bonds, or any other form of financial assistance provided under this title shall comply with the standards described in section 24312 of title 49, United States Code, as in effect on June 25, 2003, with respect to any qualified project described in subsection (c)(1) in the same manner that the National Passenger Railroad Corporation is required to comply with such standards for construction work financed under an agreement entered into under section 24308(a) of such title.

(c) QUALIFIED PROJECT DEFINED.—In this section—

(1) IN GENERAL.—Except as provided in paragraph (2), the term ''qualified project'' means any transportation infrastructure project of any governmental unit or other person that is proposed by a State, including a highway project, a transit system project, a railroad project, an airport project, a port project, and an inland waterways project.

(2) BUILD AMERICA CORPORATION PROJECTS.—

(A) IN GENERAL.—With respect to any Build America bonds issued by the Build America Corporation as authorized by section 4602, the term ''qualified project'' means any—

(i) qualified highway project,

(ii) qualified public transportation project, and

(iii) congestion relief project,

proposed by 1 or more States and approved by the Build America Corporation, which meets the requirements under clauses (i), (ii), and (iii) of subparagraph (D).

(B) QUALIFIED HIGHWAY PROJECT.—The term ''qualified highway project'' means a project for highway facilities or other facilities which are eligible for assistance under title 23, United States Code.

(C) QUALIFIED PUBLIC TRANSPORTATION PROJECT.—The term ''qualified public transportation project'' means a project for public transportation facilities or other facilities which are eligible for assistance under chapter 53 of title 49, United States Code.

(D) CONGESTION RELIEF PROJECT.—The term ''congestion relief project'' means an intermodal freight transfer facility, freight rail facility, freight movement corridor, intercity passenger rail or facility, intercity bus vehicle or facility, border crossing facility, or other public or private facility approved as a congestion relief project by the Secretary of Transportation. In making such approvals, the Secretary of Transportation shall—

(i) consider the economic, environmental, mobility, and national security improvements to be realized through the project, and

(ii) give preference to projects with national or regional significance, including any projects sponsored by a coalition of States or a combination of States and private sector entities, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(D) ADDITIONAL REQUIREMENTS FOR QUALIFIED PROJECTS.—For purposes of subparagraph (A)—

(i) COSTS OF QUALIFIED PROJECTS.—The requirement of this clause is met if the costs of the qualified project funded by Build America bonds only relate to capital investments in depreciable assets and do not include any costs relating to operations, maintenance, or rolling stock.

(ii) APPLICABILITY OF FEDERAL LAW.—The requirement of this clause is met if the requirements of any Federal law, including titles 23, 40, and 49 of the United States Code, which would otherwise apply to projects to which the United States is a party or to funds made available under such law and projects assisted with those funds are applied to—

(I) funds made available under Build America bonds for similar qualified projects, and

(II) similar qualified projects assisted by the Build America Corporation through the use of such funds.

(iii) UTILIZATION OF UPDATED CONSTRUCTION TECHNOLOGY FOR QUALIFIED PROJECTS.—The requirement of this clause is met if the appropriate State agency relating to the qualified project has updated its accepted construction technologies to match a list prescribed by the Secretary of Transportation and in effect on the date of the approval of the project as a qualified project.

PART 2—RAILROAD TRACK MODERNIZATION

SEC. 4631. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. 4632. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroad track (including roadbed, bridges, and related track structures) of class II and class III railroads. Such grants shall be for rehabilitating, preserving, or improving track used primarily for freight transportation to a standard ensuring that the track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track to handle 286,000 pound rail cars. Grants may be provided under this chapter—

''(A) directly to the class II or class III railroad; or

''(B) with the concurrence of the class II or class III railroad, to a State or local government.

''(2) STATE COOPERATION.—Class II and class III railroad applicants for a grant under this chapter are encouraged to utilize the expertise and assistance of State transportation agencies in applying for and administering such grants. State transportation agencies are encouraged to provide such expertise and assistance to such railroads.

''(3) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

''(i) condition the award of a grant to a railroad on reasonable assurances by the railroad that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services by the railroad to which the grant is to be awarded;

''(iii) ensure that consideration is given to projects that are part of a State-sponsored rail plan; and

''(iv) ensure that all such grants are awarded on a competitive basis.

''(b) MAXIMUM FEDERAL SHARE.—The maximum Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) PROJECT ELIGIBILITY.—For a project to be eligible for assistance under this section the track must have been operated or owned by a class II or class III railroad as of the date of the enactment of the Railroad Track Modernization Act of 2004.

''(d) USE OF FUNDS.—Grants provided under this section shall be used to implement track capital projects as soon as possible. In no event shall grant funds be contractually obligated for a project later than the end of the third Federal fiscal year following the year in which the grant was awarded. Any funds not so obligated by the end of such fiscal year shall be returned to the Secretary for reallocation.

''(e) ADDITIONAL PURPOSE.—In addition to making grants for projects as provided in subsection (a), the Secretary may also make grants to supplement direct loans or loan guarantees made under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(d)), for projects described in the last sentence of section 502(d) of such title. Grants made under this subsection may be used, in whole or in part, for paying credit risk premiums, lowering rates of interest, or providing for a holiday on principal payments.

''(f) EMPLOYEE PROTECTION.—The Secretary shall require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

''(g) LABOR STANDARDS.—

''(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

''(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

SEC. 4633. REGULATIONS.

(a) REGULATIONS.—The Secretary of Transporation shall prescribe under subsection (a)(3) of section 22301 of title 49, United States Code (as added by section 4601), interim and final regulations for the administration of the grant program under such section as follows:

(1) INTERIM REGULATIONS.—The Secretary shall prescribe the interim regulations to implement the program not later than December 31, 2003.

(2) FINAL REGULATIONS.—The Secretary shall prescribe the final regulations not later than October 1, 2004.

(b) INAPPLICABILITY OF RULEMAKING PROCEDURE TO INTERIM REGULATIONS.—Subchapter

II of chapter 5 of title 5, United States Code, shall not apply to the issuance of an interim regulation or to any amendment of such an interim regulation.

(c) CRITERIA.—The requirement for the establishment of criteria under subparagraph (B) of section 22301(a)(3) of title 49, United States Code, applies to the interim regulations as well as to the final regulations.

SEC. 4634. STUDY OF GRANT-FUNDED PROJECTS.

(a) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall conduct a study of the projects carried out with grant assistance under section 22301 of title 49, United States Code (as added by section 4601), to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multimodal transportation system.

(b) REPORT.—Not later than March 31, 2004, the Secretary shall submit to Congress a report on the results of the study under subsection (a). The report shall include any recommendations that the Secretary considers appropriate regarding the eligibility of light density rail networks for Federal infrastructure financing.

SEC. 4635. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation $350,000,000 for each of fiscal years 2004, 2005, and 2006 for carrying out section 22301 of title 49, United States Code (as added by section 4601).

PART 3—OTHER RAIL TRANSPORTATION-RELATED PROVISIONS

SEC. 4661. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS.

(a) ESTABLISHMENT OF PROGRAM.—

(1) PROGRAM REQUIREMENTS.—Chapter 201 of title 49, United States Code, is amended by adding at the end of subchapter II the following:

''§ 20154. Capital grants for rail line relocation projects

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation projects.

''(b) ELIGIBILITY.—A State is eligible for a grant under this section for any project for the improvement of the route or structure of a rail line passing through a municipality of the State that—

''(1) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, or economic development in the municipality;

''(2) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass; and

''(3) meets the costs-benefits requirement set forth in subsection (c).

''(c) COSTS-BENEFITS REQUIREMENT.—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 relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

''(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, and area commerce if the rail line were not so relocated.

''(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, and area commerce.

''(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

''(d) CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.—In addition to considering the relationship of benefits to costs in determining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

''(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

''(2) The requirement and limitation relating to allocation of grant funds provided in subsection (e).

''(3) Equitable treatment of the various regions of the United States.

''(e) ALLOCATION REQUIREMENTS.—

''(1) GRANTS NOT GREATER THAN $20,000,000.—At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each.

''(2) LIMITATION PER PROJECT.—Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any 1 project in that fiscal year.

''(f) FEDERAL SHARE.—The total amount of a grant awarded under this section for a rail line relocation project shall be 90 percent of the shared costs of the project, as determined under subsection (g)(4).

''(g) STATE SHARE.—

''(1) PERCENTAGE.—A State shall pay 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.

''(2) FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.

''(3) IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State are as follows:

''(A) A contribution of real property or tangible personal property (whether provided by the State or a person for the State).

''(B) A contribution of the services of employees of the State, calculated on the basis of costs incurred by the State for the pay and benefits of the employees, but excluding overhead and general administrative costs.

''(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

''(4) COSTS NOT SHARED.—

''(A) IN GENERAL.—For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds or in-kind contribution that a source other than the municipality makes available for the use of the municipality without imposing at least 1 of the following conditions:

''(i) The condition that the municipality use the funds or contribution only for the project.

''(ii) The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.

''(B) DETERMINATIONS OF THE SECRETARY.—The Secretary shall determine the amount of the costs, if any, that are not shared costs under this paragraph and the total amount of the shared costs. A determination of the Secretary shall be final.

''(h) MULTISTATE AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if—

''(1) the project will benefit each of the States entering into the agreement; and

''(2) the agreement is not a violation of a law of any such State.

''(i) REGULATIONS.—The Secretary shall prescribe regulations for carrying out this section.

''(j) STATE DEFINED.—In this section, the term 'State' includes, except as otherwise specifically provided, a political subdivision of a State.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for use in carrying out this section $350,000,000 for each of the fiscal years 2004 through 2008.''.

(2) CLERICAL AMENDMENT.—The chapter analysis for such chapter is amended by adding at the end the following:

''20154. Capital grants for rail line relocation projects.''.

(b) REGULATIONS.—

(1) INTERIM REGULATIONS.—Not later than October 1, 2003, the Secretary of Transportation shall issue temporary regulations to implement the grant program under section 20154 of title 49, United States Code, as added by subsection (a). Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of a temporary regulation under this subsection or of any amendment of such a temporary regulation.

(2) FINAL REGULATIONS.—Not later than April 1, 2004, the Secretary shall issue final regulations implementing the program.

On page 389, between lines 15 and 16, insert the following:

SEC. 18___. PRIORITY FOR PEDESTRIAN AND BICYCLE FACILITY ENHANCEMENT PROJECTS.

Section 133(e)(5) of title 23, United States Code, is amended by adding at the end the following:

''(D) PRIORITY PEDESTRIAN AND BICYCLE FACILITY ENHANCEMENT PROJECTS.—Among the pedestrian and bicycle facility enhancement projects under consideration, the Secretary shall urge that a priority be given to those pedestrian and bicycle facility projects that include a coordinated physical or healthy lifestyle program''.

On page 1027, strike lines 3 through 18, and insert the following:

(g) PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR RAIL PROJECTS.—Section 9503(c) (relating to transfers from Highway Trust Fund for certain repayments and credits) is amended by adding at the end the following new paragraph:

''(6) PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR CERTAIN RAIL PROJECTS.—With respect to rail projects beginning after the date of the enactment of this paragraph, no amount shall be available from the Highway Account (as defined in subsection (e)(5)(B)) for any rail project, except for any rail project involving publicly owned rail facilities or any rail project yielding a public benefit.''.

(h) HIGHWAY TRUST FUND EXPENDITURES FOR HIGHWAY USE TAX EVASION PROJECTS.—Section 9503(c), as amended by subsection (g), is amended to add at the end the following new paragraph:

''(7) HIGHWAY USE TAX EVASION PROJECTS.—From amounts available in the Highway Trust Fund, there is authorized to be expended—

''(A) for each fiscal year after 2003 to the Internal Revenue Service—

''(i) $30,000,000 for enforcement of fuel tax compliance, including the per-certification of tax-exempt users,

''(ii) $10,000,000 for Xstars, and

''(iii) $10,000,000 for xfirs, and

''(B) for each fiscal year after 2003 to the Federal Highway Administration, $50,000,000

to be allocated $1,000,000 to each State to combat fuel tax evasion on the State level.''.

On page 1028, lines 3 and 4, strike ''paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.'' and insert ''paragraphs (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), and (6), respectively.''

Beginning on page 1062, line 11, strike all through page 1064, line 2, and insert the following:

SEC. 5212. TRANSFER OF CERTAIN AMOUNTS FROM THE AIRPORT AND AIRWAY TRUST FUND TO THE HIGHWAY TRUST FUND TO REFLECT HIGHWAY USE OF JET FUEL.

(a) IN GENERAL.—Section 9502(d) is amended by adding at the end the following new paragraph:

''(7) TRANSFERS FROM THE TRUST FUND TO THE HIGHWAY TRUST FUND.—

''(A) IN GENERAL.—The Secretary shall pay annually from the Airport and Airway Trust Fund into the Highway Trust Fund an amount (as determined by him) equivalent to amounts received in the Airport and Airway Trust Fund which are attributable to fuel that is used primarily for highway transportation purposes.

''(B) AMOUNTS TRANSFERRED TO MASS TRANSIT ACCOUNT.—The Secretary shall transfer 11 percent of the amounts paid into the Highway Trust Fund under subparagraph (A) to the Mass Transit Account established under section 9503(e).''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 9503 is amended—

(A) by striking ''appropriated or credited'' and inserting ''paid, appropriated, or credited'', and

(B) by striking ''or section 9602(b)'' and inserting '', section 9502(d)(7), or section 9602(b)''.

(2) Subsection (e)(1) of section 9503 is amended by striking ''or section 9602(b)'' and inserting '', section 9502(d)(7), or section 9602(b)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

On page 1081, between lines 19 and 20, insert the following:

SEC. 5246. ELECTRONIC REPORTING.

(a) IN GENERAL.—Section 4101(d), as amended by section 5273 of this Act, is amended by adding at the end the following new sentence: ''Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply on October 1, 2004.

On page 1298, strike lines 16 through 24 and insert the following:

Subtitle H—Additional Revenue Provisions

PART I—ADMINISTRATIVE PROVISIONS

SEC. 5672. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''September 30, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

SEC. 5673. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 5674. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

PART II—FINANCIAL INSTRUMENTS

SEC. 5675. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

''For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 5676. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERSHIPS AND S CORPORATIONS.

(a) IN GENERAL.—Section 168(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

''(A) IN GENERAL.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

''(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

''(i) the corporation's allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

''(ii) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation's allocable share of such interest expense.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5677. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

''(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

''(A) a debtor corporation transfers stock, or

''(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 5678. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

''(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

''(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

''(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

''(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.''.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

''(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and'', and

(B) by adding at the end the following new flush sentence:

''The Secretary shall prescribe regulations which specify the proper methods for clearly

identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.''.

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.''

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

''(A) terminated the position for its fair market value immediately before the settlement, and

''(B) sold the property so delivered by the taxpayer at its fair market value.''.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Section 1092(d)(3) is repealed.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking ''; except that the term 'personal property' shall include stock''.

(d) REPEAL OF QUALIFIED COVERED CALL EXCEPTION.—Section 1092(c)(4) is amended by adding at the end the following new subparagraph:

''(I) TERMINATION.—This paragraph shall not apply to any position established on or after the date of the enactment of this subparagraph.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 5679. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking ''is issued by a corporation or a government or political subdivision thereof and''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

PART III—CORPORATIONS AND PARTNERSHIPS

SEC. 5680. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''.

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 5681. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 5682. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

'(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

(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. 5683. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 754 is repealed.

(b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking '', with respect to which the election provided in section 754 is in effect,'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking ''(as adjusted by section 732(d))'' both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking ''**optional**'' in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

(1) by striking ''with respect to which the election provided in section 754 is in effect'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

(3) by adding at the end the following new subsection:

''(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.'', and

(4) by striking ''**optional**'' in the heading.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking ''section 734(b) (relating to the optional adjustment'' and inserting ''section 734(a) (relating to the adjustment'', and

(B) by striking ''section 743(b) (relating to the optional adjustment'' and inserting ''section 743(a) (relating to the adjustment''.

(3) Section 761(e)(2) is amended by striking ''optional''.

(4) Section 774(a) is amended by striking ''743(b)'' both places it appears and inserting ''743(a)''.

(5) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(6) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers and distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

SEC. 5685. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking ''and'' at the end of

clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) initial clearing and grading land improvements with respect to gas utility property.''.

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.''.

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting ''or (E)(iv)'' after ''(E)(iii)'', and

(2) by adding at the end the following new item:

''(F) ..... 25''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 5686. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

''(i) the amount of start-up expenditures with respect to the active trade or business, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

''(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking ''AMORTIZE'' and inserting ''DEDUCT'' in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

''(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

''(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

''(A) the amount of organizational expenditures with respect to the taxpayer, or

''(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

''(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.''.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

''(i) the amount of organizational expenses with respect to the partnership, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

''(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

''(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ''AMORTIZATION'' and inserting ''DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

On page 521, strike line 18 and all that follows through the matter following line 18 on page 720, and insert the following:

TITLE III—PUBLIC TRANSPORTATION

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Federal Public Transportation Act of 2004''.

SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY.

(a) AMENDMENTS TO TITLE 49.—Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) UPDATED TERMINOLOGY.—Except for sections 5301(f), 5302(a)(7), and 5315, chapter 53, including the chapter analysis, is amended by striking ''mass transportation'' each place it appears and inserting ''public transportation''.

SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.

(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—Section 5301(a) is amended to read as follows:

''(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the economic interest of the United States to foster the development and revitalization of public transportation systems, which are coordinated with other modes of transportation, that maximize the efficient, secure, and safe mobility of individuals and minimize environmental impacts.''.

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended—

(1) by striking ''70 percent'' and inserting ''two-thirds''; and

(2) by striking ''urban areas'' and inserting ''urbanized areas''.

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended—

(1) by striking ''an urban'' and inserting ''a''; and

(2) by striking ''under sections 5309 and 5310 of this title''.

(d) GENERAL PURPOSES.—Section 5301(f) is amended—

(1) in paragraph (1)—

(A) by striking ''improved mass'' and inserting ''improved public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(2) in paragraph (2)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(3) in paragraph (3)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public or private mass transportation companies'' and inserting ''public transportation companies or private companies engaged in public transportation''; and

(4) in paragraph (5), by striking ''urban mass'' and inserting ''public''.

SEC. 3004. DEFINITIONS.

Section 5302(a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G)(i), by inserting ''including the intercity bus and intercity rail portions of such facility or mall,'' after ''transportation mall,'';

(B) in subparagraph (G)(ii), by inserting '', except for the intercity bus portion of intermodal facilities or malls,'' after ''commercial revenue-producing facility'';

(C) in subparagraph (H)—

(i) by striking ''and'' after ''innovative'' and inserting ''or''; and

(ii) by striking ''or'' after the semicolon at the end;

(D) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

''(J) crime prevention and security, including—

''(i) projects to refine and develop security and emergency response plans; or

''(ii) projects to detect chemical or biological agents in public transportation;

''(K) conducting emergency response drills with public transportation agencies and local first response agencies or security training for public transportation employees, except for expenses relating to operations; or

''(L) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter.'';

(2) by striking paragraph (16);

(3) by redesignating paragraphs (8) through (15) as paragraphs (9) through (16), respectively;

(4) by striking paragraph (7) and inserting the following:

''(7) MASS TRANSPORTATION.—The term 'mass transportation' means public transportation.

''(8) MOBILITY MANAGEMENT.—The term 'mobility management' means a short-range planning or management activity or project that does not include operating public transportation services and—

''(A) improves coordination among public transportation providers, including private companies engaged in public transportation;

''(B) addresses customer needs by tailoring public transportation services to specific market niches; or

''(C) manages public transportation demand.'';

(5) by amending paragraph (11), as redesignated, to read as follows:

''(11) PUBLIC TRANSPORTATION.—The term 'public transportation' means transportation

by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity bus or passenger rail, or sightseeing transportation.'';

(6) in subparagraphs (A) and (E) of paragraph (16), as redesignated, by striking ''and'' each place it appears and inserting ''or''; and

(7) by amending paragraph (17) to read as follows:

''(17) URBANIZED AREA.—The term 'urbanized area' means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.''.

SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.

Section 5303 is amended to read as follows:

''§ 5303. Metropolitan transportation planning

''(a) DEFINITIONS.—As used in this section and in section 5304, the following definitions shall apply:

''(1) CONSULTATION.—A 'consultation' occurs when 1 party—

''(A) confers with another identified party in accordance with an established process;

''(B) prior to taking action, considers the views of the other identified party; and

''(C) periodically informs that party about action taken.

''(2) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization and the Governor under subsection (d).

''(3) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the Policy Board of the organization designated under subsection (c).

''(4) NONMETROPOLITAN AREA.—The term 'nonmetropolitan area' means any geographic area outside all designated metropolitan planning areas.

''(5) NONMETROPOLITAN LOCAL OFFICIAL.—The term 'nonmetropolitan local official' means any elected or appointed official of general purpose local government located in a nonmetropolitan area who is responsible for transportation services for such local government.

''(b) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans and programs for metropolitan planning areas of the State in which it is located.

''(2) CONTENTS.—The plans and programs developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(4) PLANNING AND PROJECT DEVELOPMENT.—The metropolitan planning organization, the State Department of Transportation, and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements that address the most complex problems and pressing transportation needs in the metropolitan area.

''(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area—

''(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

''(B) in accordance with procedures established by applicable State or local law.

''(2) STRUCTURE.—Each metropolitan planning organization designated under paragraph (1) that serves an area identified as a transportation management area shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

''(C) appropriate State officials.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

''(A) to develop plans and programs for adoption by a metropolitan planning organization; and

''(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

''(4) CONTINUING DESIGNATION.—The designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

''(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

''(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

''(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

''(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

''(2) INCLUDED AREA.—Each metropolitan planning area—

''(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

''(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Office of Management and Budget.

''(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

''(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area in existence as of the date of enactment of the Federal Public Transportation Act of 2004 shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in accordance with paragraph (5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—If an urbanized area is designated after the date of enactment of this paragraph in a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in accordance with subsection (c)(1);

''(B) shall encompass the areas described in paragraph (2)(A);

''(C) may encompass the areas described in paragraph (2)(B); and

''(D) may address any nonattainment identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

''(e) COORDINATION IN MULTISTATE AREAS.—

''(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

''(2) INTERSTATE COMPACTS.—States are authorized—

''(A) to enter into agreements or compacts with other States, which agreements or compacts are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) LAKE TAHOE REGION.—

''(A) DEFINITION.—In this paragraph, the term 'Lake Tahoe region' has the meaning given the term 'region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

''(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

''(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

''(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5304.

''(C) INTERSTATE COMPACT.—

''(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (c), to carry out the transportation planning process required by this section, California and Nevada may designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governor of the State of California, the Governor of the State of Nevada, and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area), or in accordance

with procedures established by applicable State or local law.

''(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

''(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

''(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of title 23 and this chapter, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

''(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

''(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

''(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.

''(f) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans required by this section.

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement funded from the highway trust fund is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans regarding the transportation improvement.

''(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single metropolitan planning area or State shall be coordinated directly with the affected, contiguous, metropolitan planning organizations and States.

''(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to coordinate its planning process, to the maximum extent practicable, with those officials responsible for other types of planning activities that are affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, housing, and freight.

''(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans with due consideration of, and in coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under this chapter;

''(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(iii) recipients of assistance under section 204 of title 23.

''(g) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The goals and objectives developed through the metropolitan planning process for a metropolitan planning area under this section shall address, in relation to the performance of the metropolitan area transportation systems—

''(A) supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency, including through services provided by public and private operators;

''(B) increasing the safety of the transportation system for motorized and nonmotorized users;

''(C) increasing the security of the transportation system for motorized and nonmotorized users;

''(D) increasing the accessibility and mobility of people and for freight, including through services provided by public and private operators;

''(E) protecting and enhancing the environment (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promoting energy conservation, and promoting consistency between transportation improvements and State and local land use planning and economic development patterns (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the metropolitan area);

''(F) enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight, including through services provided by public and private operators;

''(G) promoting efficient system management and operation; and

''(H) emphasizing the preservation and efficient use of the existing transportation system, including services provided by public and private operators.

''(2) SELECTION OF FACTORS.—After soliciting and considering any relevant public comments, the metropolitan planning organization shall determine which of the factors described in paragraph (1) are most appropriate to consider.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

''(h) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Each metropolitan planning organization shall develop a transportation plan for its metropolitan planning area in accordance with this subsection, and update such plan—

''(i) not less frequently than once every 4 years in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in areas that were nonattainment that have been redesignated as attainment, in accordance with paragraph (3) of such section, with a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a); or

''(ii) not less frequently than once every 5 years in areas designated as attainment, as defined in section 107(d) of the Clean Air Act.

''(B) COORDINATION FACTORS.—In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast period.

''(C) FINANCIAL ESTIMATES.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(2) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(3) CONTENTS.— A transportation plan under this subsection shall be in a form that the Secretary determines to be appropriate and shall contain—

''(A) an identification of transportation facilities, including major roadways, transit, multimodal and intermodal facilities, intermodal connectors, and other relevant facilities identified by the metropolitan planning organization, which should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

''(B) a financial plan that—

''(i) demonstrates how the adopted transportation plan can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

''(C) operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

''(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs; and

''(E) proposed transportation and transit enhancement activities.

''(4) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

''(B) ISSUES.—The consultation shall involve—

''(i) comparison of transportation plans with State conservation plans or with maps, if available;

''(ii) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(iii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

''(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

''(6) APPROVAL OF THE TRANSPORTATION PLAN.—Each transportation plan prepared by a metropolitan planning organization shall be—

''(A) approved by the metropolitan planning organization; and

''(B) submitted to the Governor for information purposes at such time and in such manner as the Secretary may reasonably require.

''(i) PARTICIPATION BY INTERESTED PARTIES.—

''(1) DEVELOPMENT OF PARTICIPATION PLAN.—Not less frequently than every 4 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan and programs by—

''(A) citizens;

''(B) affected public agencies;

''(C) representatives of public transportation employees;

''(D) freight shippers;

''(E) providers of freight transportation services;

''(F) private providers of transportation;

''(G) representatives of users of public transit;

''(H) representatives of users of pedestrian walkways and bicycle transportation facilities; and

''(I) other interested parties.

''(2) CONTENTS OF PARTICIPATION PLAN.—The participation plan—

''(A) shall be developed in a manner the Secretary determines to be appropriate;

''(B) shall be developed in consultation with all interested parties; and

''(C) shall provide that all interested parties have reasonable opportunities to comment on—

''(i) the process for developing the transportation plan; and

''(ii) the contents of the transportation plan.

''(3) METHODS.—The participation plan shall provide that the metropolitan planning organization shall, to the maximum extent practicable—

''(A) hold any public meetings at convenient and accessible locations and times;

''(B) employ visualization techniques to describe plans; and

''(C) make public information available in electronically accessible format and means, such as the World Wide Web.

''(4) CERTIFICATION.—Before the metropolitan planning organizations approve a transportation plan or program, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

''(j) TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT AND UPDATE.—

''(A) IN GENERAL.—In cooperation with the State and affected operators of public transportation, a metropolitan planning organization designated for a metropolitan planning area shall develop a transportation improvement program for the area.

''(B) PARTICIPATION.—In developing the transportation improvement program, the metropolitan planning organization, in cooperation with the Governor and any affected operator of public transportation, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i).

''(C) UPDATES.—The transportation improvement program shall be updated not less than once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

''(D) FUNDING ESTIMATE.—In developing the transportation improvement program, the metropolitan planning organization, operators of public transportation, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

''(E) PROJECT ADVANCEMENT.—Projects listed in the transportation improvement program may be selected for advancement consistent with the project selection requirements.

''(F) MAJOR AMENDMENTS.—Major amendments to the list described in subparagraph (E), including the addition, deletion, or concept and scope change of a regionally significant project, may not be advanced without—

''(i) appropriate public involvement;

''(ii) financial planning;

''(iii) transportation conformity analyses; and

''(iv) a finding by the Federal Highway Administration and Federal Transit Administration that the amended plan was produced in a manner consistent with this section.

''(2) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER CHAPTER 1 OF TITLE 23 AND THIS CHAPTER.—A transportation improvement program developed under this section for a metropolitan area shall include the projects and strategies within the metropolitan area that are proposed for funding under chapter 1 of title 23 and this chapter.

''(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the metropolitan transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not regionally significant shall be grouped in 1 line item or identified individually in the metropolitan transportation improvement program.

''(3) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Except as otherwise provided under subsection (k)(4), the selection of federally funded projects in metropolitan planning areas shall be carried out, from the approved transportation plan—

''(i) by the State, in the case of projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5317 of this title;

''(ii) by the designated recipient, in the case of projects under section 5307; and

''(iii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project may be advanced from the transportation improvement program in place of another project in the same transportation improvement program without the approval of the Secretary.

''(4) PUBLICATION REQUIREMENTS.—

''(A) PUBLICATION OF TRANSPORTATION IMPROVEMENT PROGRAM.—A transportation improvement program involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including, to the maximum extent practicable, in electronically accessible formats and means, such as the World Wide Web.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding 4 years shall be published or otherwise made available for public review by the cooperative effort of the State, transit operator, and the metropolitan planning organization. This listing shall be consistent with the funding categories identified in the transportation improvement program.

''(C) RULEMAKING.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations specifying—

''(i) the types of data to be included in the list described in subparagraph (B), including—

''(I) the name, type, purpose, and geocoded location of each project;

''(II) the Federal, State, and local identification numbers assigned to each project;

''(III) amounts obligated and expended on each project, sorted by funding source and transportation mode, and the date on which each obligation was made; and

''(IV) the status of each project; and

''(ii) the media through which the list described in subparagraph (B) will be made available to the public, including written and visual components for each of the projects listed.

''(k) TRANSPORTATION MANAGEMENT AREAS.—

''(1) REQUIRED IDENTIFICATION.—The Secretary shall identify each urbanized area with a population of more than 200,000 individuals as a transportation management area.

''(2) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and programs for a metropolitan planning area serving a transportation management area shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

''(3) CONGESTION MANAGEMENT SYSTEM.—

''(A) IN GENERAL.—The transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and this chapter through the use of travel demand reduction and operational management strategies.

''(B) PHASE-IN SCHEDULE.—The Secretary shall establish a phase-in schedule that provides for full compliance with the requirements of this section not later than 1 year after the identification of transportation management areas under paragraph (1).

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (except for projects carried out on the National Highway System and projects carried out under the bridge program or the interstate maintenance program) or under this chapter shall be selected for implementation from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area and projects carried out within such boundaries under the bridge program or the interstate maintenance program under title 23 shall be

selected for implementation from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

''(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with Federal law; and

''(ii) subject to subparagraph (B), certify, not less frequently than once every 4 years in nonattainment and maintenance areas (as defined under the Clean Air Act) and not less frequently than once every 5 years in attainment areas (as defined under such Act), that the requirements of this paragraph are met with respect to the metropolitan planning process.

''(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

''(i) the transportation planning process complies with the requirements of this section and all other applicable Federal law; and

''(ii) a transportation plan and a transportation improvement program for the metropolitan planning area have been approved by the metropolitan planning organization and the Governor.

''(C) PENALTY FOR FAILING TO CERTIFY.—

''(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

''(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

''(D) REVIEW OF CERTIFICATION.—In making a certification under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

''(l) ABBREVIATED PLANS FOR CERTAIN AREAS.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and transportation improvement program for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(m) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of title 23 or this chapter, Federal funds may not be advanced for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

''(2) APPLICABILITY.—This subsection applies to any nonattainment area within the metropolitan planning area boundaries determined under subsection (d).

''(n) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project that is not eligible under title 23 or this chapter.

''(o) AVAILABILITY OF FUNDS.—Funds set aside under section 104(f) of title 23 or section 5308 of this title shall be available to carry out this section.

''(p) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.

Section 5304 is amended to read as follows:

''§ 5304. Statewide transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To support the policies described in section 5301(a), each State shall develop a statewide transportation plan (referred to in this section as a ''Plan'') and a statewide transportation improvement program (referred to in this section as a ''Program'') for all areas of the State subject to section 5303.

''(2) CONTENTS.—The Plan and the Program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the Plan and the Program shall—

''(A) provide for the consideration of all modes of transportation and the policies described in section 5301(a); and

''(B) be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—Each State shall—

''(1) coordinate planning under this section with—

''(A) the transportation planning activities under section 5303 for metropolitan areas of the State; and

''(B) other related statewide planning activities, including trade and economic development and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan, as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—States may enter into agreements or compacts with other States for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(d) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for the consideration of projects, strategies, and implementing projects and services that will—

''(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of people and freight;

''(E) protect and enhance the environment (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promote energy conservation, promote consistency between transportation improvements and State and local land use planning and economic development patterns, and improve the quality of life (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the State);

''(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation and efficient use of the existing transportation system.

''(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the State shall determine which of the projects and strategies described in paragraph (1) are most appropriate.

''(3) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(4) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor described in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a Program, a project or strategy, or the certification of a planning process.

''(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider—

''(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

''(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) coordination of Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—Each State shall develop a Plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—The Plan shall be developed for each metropolitan planning area in the State in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The Plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

''(I) land use management;

''(II) natural resources;

''(III) environmental protection;

''(IV) conservation; and

''(V) historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve—

''(I) comparison of transportation plans to State conservation plans or maps, if available;

''(II) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(III) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

''(A) provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed Plan; and

''(B) to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web.

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A Plan shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(5) TRANSPORTATION STRATEGIES.—A Plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people.

''(6) FINANCIAL PLAN.—The Plan may include a financial plan that—

''(A) demonstrates how the adopted Plan can be implemented;

''(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

''(C) recommends any additional financing strategies for needed projects and programs; and

''(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

''(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects described in paragraph (6)(D).

''(8) EXISTING SYSTEM.—The Plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each Plan prepared by a State shall be published or otherwise made available, including, to the maximum extent practicable, in electronically accessible formats and means, such as the World Wide Web.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—Each State shall develop a Program for all areas of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—With respect to each metropolitan planning area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the Program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested parties with a reasonable opportunity to comment on the proposed Program.

''(4) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A Program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—

''(i) IN GENERAL.—The Program shall cover a minimum of 4 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 4 years.

''(ii) PUBLICATION.—An annual listing of projects for which funds have been obligated in the preceding 4 years in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

''(C) INDIVIDUAL IDENTIFICATION.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project included in the list described in subparagraph (B) shall be—

''(i) consistent with the Plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in each year of the approved metropolitan transportation improvement program; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The Program shall not include a project, or an identified phase of a project, unless full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—The Program may include a financial plan that—

''(i) demonstrates how the approved Program can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects described in subparagraph (F)(iv).

''(ii) REQUIRED APPROVAL BY THE SECRETARY.—A State shall not include any project from the illustrative list of additional projects described in subparagraph (F)(iv) in an approved Program without the approval of the Secretary.

''(H) PRIORITIES.—The Program shall reflect the priorities for programming and expenditures of funds, including transportation and transit enhancement activities, required by title 23 and this chapter, and transportation control measures included in the State's air quality implementation plan.

''(5) PROJECT SELECTION FOR AREAS WITH FEWER THAN 50,000 INDIVIDUALS.—

''(A) IN GENERAL.—Each State, in cooperation with the affected nonmetropolitan local officials with responsibility for transportation, shall select projects to be carried out in areas with fewer than 50,000 individuals from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the interstate maintenance program under title 23 or sections 5310 and 5311 of this title).

''(B) CERTAIN PROGRAMS.—Each State, in consultation with the affected nonmetropolitan local officials with responsibility for transportation, shall select, from the approved Program, projects to be carried out in areas with fewer than 50,000 individuals under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this title.

''(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 4 years.

''(7) PLANNING FINDING.—Not less frequently than once every 4 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed are consistent with this section and section 5303.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project included in the approved Program may be advanced in place of another project in the program without the approval of the Secretary.

''(h) FUNDING.—Funds set aside pursuant to section 104(i) of title 23 and 5308 of this title shall be available to carry out this section.

''(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section and section 5303, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management system under section 5303(i)(3) if the Secretary determines that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of section 5303.

''(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary under this section, regarding a metropolitan or statewide transportation plan or the Program, shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 3007. TRANSPORTATION MANAGEMENT AREAS.

Section 5305 is repealed.

SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.

Section 5306 is amended—

(1) in subsection (a)—

(A) by striking ''5305 of this title'' and inserting ''5308''; and

(B) by inserting '', as determined by local policies, criteria, and decision making,'' after ''feasible'';

(2) in subsection (b) by striking ''5303–5305 of this title'' and inserting ''5303, 5304, and 5308''; and

(3) by adding at the end the following:

''(c) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations describing how the requirements under this chapter relating to subsection (a) shall be enforced.

SEC. 3009. URBANIZED AREA FORMULA GRANTS.

(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

(1) by striking subsections (h), (j) and (k); and

(2) by redesignating subsections (i), (*l*), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

(b) DEFINITIONS.—Section 5307(a) is amended—

(1) by amending paragraph (2)(A) to read as follows:

''(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under sections 5336 and 5337 that are attributable to transportation management areas designated under section 5303; or''; and

(2) by adding at the end the following:

''(3) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that may receive a Federal transit program grant indirectly through a recipient, rather than directly from the Federal Government.''.

(c) GENERAL AUTHORITY.—Section 5307(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary of Transportation may award grants under this section for—

''(A) capital projects, including associated capital maintenance items;

''(B) planning, including mobility management;

''(C) transit enhancements;

''(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000; and

''(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

''(i) the urbanized area includes parts of more than 1 State;

''(ii) the portion of the urbanized area includes only 1 State;

''(iii) the population of the portion of the urbanized area is less than 30,000; and

''(iv) the grants will not be used to provide public transportation outside of the portion of the urbanized area.'';

(2) by amending paragraph (2) to read as follows:

''(2) SPECIAL RULE FOR FISCAL YEARS 2004 THROUGH 2006—

''(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 2004 through 2006, 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 YEAR 2004.—In fiscal year 2004—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 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 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 the amount the portion of the area received under section 5311 for fiscal year 2002.

''(C) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

''(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.

''(D) MAXIMUM AMOUNTS IN FISCAL YEAR 2006.—In fiscal year 2006—

''(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

(3) by striking paragraph (4).

(d) PUBLIC PARTICIPATION REQUIREMENTS.—Section 5307(c)(5) is amended by striking ''section 5336'' and inserting ''sections 5336 and 5337''.

(e) GRANT RECIPIENT REQUIREMENTS.—Section 5307(d)(1) is amended—

(1) in subparagraph (A), by inserting '', including safety and security aspects of the program'' after ''program'';

(2) in subparagraph (E), by striking ''section'' and all that follows and inserting ''section, the recipient will comply with sections 5323 and 5325;'';

(3) in subparagraph (H), by striking ''sections 5301(a) and (d), 5303-5306, and 5310(a)-(d) of this title'' and inserting ''subsections (a) and (d) of section 5301 and sections 5303 through 5306'';

(4) in subparagraph (I) by striking ''and'' at the end;

(5) in subparagraph (J), by striking the period at the end and inserting ''; and''; and

(6) by adding at the end the following:

''(K) if located in an urbanized area with a population of at least 200,000, will expend not less than 1 percent of the amount the recipient receives each fiscal year under this section for transit enhancement activities described in section 5302(a)(15).''.

(f) GOVERNMENT'S SHARE OF COSTS.—Section 5307(e) is amended—

(1) by striking the first sentence and inserting the following:

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall cover 80 percent of the net project cost.'';

(2) by striking ''A grant for operating expenses'' and inserting the following:

''(2) OPERATING EXPENSES.—A grant for operating expenses'';

(3) by striking the fourth sentence and inserting the following:

''(3) REMAINING COSTS.—The remainder of the net project cost shall be provided in cash from non-Federal sources or revenues derived from the sale of advertising and concessions and amounts received under a service agreement with a State or local social service agency or a private social service organization.''; and

(4) by adding at the end the following: ''The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to the remainder.''.

(g) UNDERTAKING PROJECTS IN ADVANCE.—Section 5307(g) is amended by striking paragraph (4).

(h) RELATIONSHIP TO OTHER LAWS.—Section 5307(k), as redesignated, is amended to read as follows:

''(k) RELATIONSHIP TO OTHER LAWS.—

''(1) APPLICABLE PROVISIONS.—Sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333 and 5335 apply to this section and to any grant made under this section.

''(2) INAPPLICABLE PROVISIONS.—

''(A) IN GENERAL.—Except as provided under this section, no other provision of this chapter applies to this section or to a grant made under this section.

''(B) TITLE 5.—The provision of assistance under this chapter shall not be construed as bringing within the application of chapter 15 of title 5, any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to which such chapter is otherwise inapplicable.''.

SEC. 3010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

''§ 5308. Planning programs

''(a) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, make agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities to—

''(1) develop transportation plans and programs;

''(2) plan, engineer, design, and evaluate a public transportation project; or

''(3) conduct technical studies relating to public transportation, including—

''(A) studies related to management, planning, operations, capital requirements, and economic feasibility;

''(B) evaluations of previously financed projects;

''(C) peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners; and

''(D) other similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of facilities and equipment.

''(b) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

''(c) METROPOLITAN PLANNING PROGRAM.—

''(1) ALLOCATIONS TO STATES.—

''(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(3)(A) to States to carry out sections 5303 and 5306 in a ratio equal to the population in urbanized areas in each State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

''(B) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the total amount allocated under this paragraph.

''(2) AVAILABILITY OF FUNDS.—A State receiving an allocation under paragraph (1) shall promptly distribute such funds to metropolitan planning organizations in the State under a formula—

''(A) developed by the State in cooperation with the metropolitan planning organizations;

''(B) approved by the Secretary of Transportation;

''(C) that considers population in urbanized areas; and

''(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

''(3) SUPPLEMENTAL ALLOCATIONS.—

''(A) IN GENERAL.—The Secretary shall allocate 20 percent of the amount made available under subsection (g)(3)(A) to States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

''(B) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303, 5304, and 5306.

''(d) STATE PLANNING AND RESEARCH PROGRAM.—

''(1) IN GENERAL.—The Secretary shall allocate amounts made available pursuant to subsection (g)(3)(B) to States for grants and contracts to carry out sections 5304, 5306, 5315, and 5322 so that each State receives an amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census.

''(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated under this subsection.

''(3) REALLOCATION.—A State may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (c).

''(e) PLANNING CAPACITY BUILDING PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the ''Program'') to support and fund innovative practices and enhancements in transportation planning.

''(2) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5303 and 5304.

''(3) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

''(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

''(ii) to conduct research, disseminate information, and provide technical assistance.

''(B) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in subparagraph (A), the Secretary may—

''(i) expend appropriated funds directly; or

''(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local governmental authority, association, nonprofit or for-profit entity, or institution of higher education.

''(f) GOVERNMENT'S SHARE OF COSTS.—Amounts made available to carry out subsections (c), (d), and (e) may not exceed 80 percent of the costs of the activity unless the Secretary of Transportation determines that it is in the interest of the Government not to require State or local matching funds.

''(g) ALLOCATION OF FUNDS.—Of the amounts made available under section 5338(b)(2)(B) for fiscal year 2005 and each fiscal year thereafter to carry out this section—

''(1) $5,000,000 shall be allocated for the Planning Capacity Building Program established under subsection (e);

''(2) $20,000,000 shall be allocated for grants under subsection (a)(2) for alternatives analyses required by section 5309(e)(2)(A); and

''(3) of the remaining amount—

''(A) 82.72 percent shall be allocated for the metropolitan planning program described in subsection (d); and

''(B) 17.28 percent shall be allocated to carry out subsection (b).

''(h) REALLOCATIONS.—Any amount allocated under this section that has not been used 3 years after the end of the fiscal year in which the amount was allocated shall be reallocated among the States.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5308 in the table of sections for chapter 53 is amended to read as follows:

''5308. Planning programs.''.

SEC. 3011. CAPITAL INVESTMENT PROGRAM.

(a) SECTION HEADING.—The section heading of section 5309 is amended to read as follows:

''§ 5309. Capital investment grants''.

(b) GENERAL AUTHORITY.—Section 5309(a) is amended—

(1) in paragraph (1)—

(A) by striking ''(1) The Secretary of Transportation may make grants and loans'' and inserting the following:

''(1) GRANTS AUTHORIZED.—The Secretary may award grants'';

(B) in subparagraph (A), by striking ''alternatives analysis related to the development of systems,'';

(C) by striking subparagraphs (B), (C), (D), and (G);

(D) by redesignating subparagraphs (E), (F), and (H) as subparagraphs (B), (C), and (D), respectively;

(E) in subparagraph (C), as redesignated, by striking the semicolon at the end and inserting '', including programs of bus and bus-related projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and''; and

(F) in subparagraph (D), as redesignated—

(i) by striking ''to support fixed guideway systems''; and

(ii) by striking ''dedicated bus and high occupancy vehicle'';

(2) by amending paragraph (2) to read as follows:

''(2) GRANTEE REQUIREMENTS.—

''(A) GRANTEE IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or

subrecipient located in an urbanized area shall be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

''(B) GRANTEE NOT IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or subrecipient not located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions as a recipient or subrecipient of assistance under section 5311.

''(C) SUBRECIPIENT.—The Secretary shall require that any private, nonprofit organization that is a subrecipient of a grant awarded under this section shall be subject to the same terms, conditions, requirements, and provisions as a subrecipient of assistance under section 5310.

''(D) STATEWIDE TRANSIT PROVIDER GRANTEES.—A statewide transit provider that receives a grant under this section shall be subject to the terms, conditions, requirements, and provisions of this section or section 5311, consistent with the scope and purpose of the grant and the location of the project.''; and

(3) by adding at the end the following:

''(3) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the findings required under this subsection.''.

(c) DEFINED TERM.—Section 5309(b) is amended to read as follows:

''(b) DEFINED TERM.—As used in this section, the term 'alternatives analysis' means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

''(1) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

''(2) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

''(3) the selection of a locally preferred alternative; and

''(4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.''.

(d) GRANT REQUIREMENTS.—Section 5309(d) is amended to read as follows:

''(d) GRANT REQUIREMENTS.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

''(1) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

''(2) the applicant has, or will have—

''(A) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

''(B) satisfactory continuing control over the use of the equipment or facilities; and

''(C) the capability and willingness to maintain the equipment or facilities.''.

(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—Section 5309(e) is amended to read as follows:

''(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—

''(1) FULL FUNDING GRANT AGREEMENT.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving not less than $75,000,000 under this subsection for a new fixed guideway capital project that—

''(A) is authorized for final design and construction; and

''(B) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).

''(2) DETERMINATIONS.—The Secretary may not award a grant under this subsection for a new fixed guideway capital project unless the Secretary determines that the proposed project is—

''(A) based on the results of an alternatives analysis and preliminary engineering;

''(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use patterns and policies; and

''(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct the project, and maintain and operate the entire public transportation system, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(3) EVALUATION OF PROJECT JUSTIFICATION.—In making the determinations under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—

''(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

''(B) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(C) the direct and indirect costs of relevant alternatives;

''(D) factors such as—

''(i) congestion relief;

''(ii) improved mobility;

''(iii) air pollution;

''(iv) noise pollution;

''(v) energy consumption; and

''(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

''(E) reductions in local infrastructure costs achieved through compact land use development and positive impacts on the capacity, utilization, or longevity of other surface transportation assets and facilities;

''(F) the cost of suburban sprawl;

''(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

''(H) population density and current transit ridership in the transportation corridor;

''(I) the technical capability of the grant recipient to construct the project;

''(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

''(K) other factors that the Secretary determines to be appropriate to carry out this chapter.

''(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

''(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

''(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

''(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

''(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

''(i) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(ii) existing grant commitments;

''(iii) the degree to which financing sources are dedicated to the proposed purposes;

''(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

''(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project, provided that if the Secretary gives priority to financing projects that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

''(5) PROJECT ADVANCEMENT AND RATINGS.—

''(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

''(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by regulation.

''(6) APPLICABILITY.—This subsection shall not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2004.

''(7) RULEMAKING.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations on the manner by which the Secretary shall evaluate and rate projects based on the results of alternatives analysis, project justification, and local financial commitment, in accordance with this subsection.

''(8) POLICY GUIDANCE.—

''(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process—

''(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004; and

''(ii) each time significant changes are made by the Secretary to the new starts project review and evaluation process and criteria, but not less frequently than once every 2 years.

''(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

''(i) invite public comment to the policy guidance published under subparagraph (A); and

''(ii) publish a response to the comments received under clause (i).''.

(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.— Section 5309(f) is amended to read as follows:

''(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.—

''(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—

''(A) IN GENERAL.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than $75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

''(i) is authorized by law; and

''(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (3)(B).

''(B) CONTENTS.—

''(i) IN GENERAL.—An agreement under this paragraph shall specify—

''(I) the scope of the project to be constructed;

''(II) the estimated net cost of the project;

''(III) the schedule under which the project shall be constructed;

''(IV) the maximum amount of funding to be obtained under this subsection;

''(V) the proposed schedule for obligation of future Federal grants; and

''(VI) the sources of non-Federal funding.

''(ii) ADDITIONAL FUNDING.—The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

''(C) FULL FUNDING GRANT AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

''(2) SELECTION PROCESS.—

''(A) SELECTION CRITERIA.—The Secretary may not award a grant under this subsection for a proposed project unless the Secretary determines that the project is—

''(i) based on the results of planning and alternatives analysis;

''(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

''(iii) supported by an acceptable degree of local financial commitment.

''(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph (A)(i), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

''(C) PROJECT JUSTIFICATION.—In making the determinations under subparagraph (A)(ii), the Secretary shall—

''(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local developmental goals;

''(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service;

''(iii) determine the degree to which the project will have a positive effect on local economic development;

''(iv) consider the reliability of the forecasts of costs and ridership associated with the project; and

''(v) consider other factors that the Secretary determines to be appropriate to carry out this subsection.

''(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(iii), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

''(3) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

''(A) IN GENERAL.—A proposed project under this subsection may not advance from the planning and alternatives analysis stage to project development and construction unless—

''(i) the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements; and

''(ii) the metropolitan planning organization has adopted the locally preferred alternative for the project into the long-range transportation plan.

''(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall evaluate and rate the project as high, medium-high, medium, medium-low, or low, based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required under this subsection.

''(4) IMPACT REPORT.—

''(A) IN GENERAL.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Federal Transit Administration shall submit a report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway projects to—

''(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

''(5) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.''.

(g) FULL FUNDING GRANT AGREEMENTS.— Section 5309(g)(2) is amended by adding at the end the following:

''(C) BEFORE AND AFTER STUDY.—

''(i) IN GENERAL.—Each full funding grant agreement shall require the applicant to conduct a study that—

''(I) describes and analyzes the impacts of the new start project on transit services and transit ridership;

''(II) evaluates the consistency of predicted and actual project characteristics and performance; and

''(III) identifies sources of differences between predicted and actual outcomes.

''(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

''(I) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement shall submit a complete plan for the collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

''(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

''(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

''(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

''(cc) collection of data on the transit system 2 years after the opening of the new start project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the new start project; and

''(dd) analysis of the consistency of predicted project characteristics with the after data.

''(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement, recipients shall have collected data on the current system, according to the plan required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

''(E) PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM.—

''(i) AUTHORIZATION.—The Secretary may establish a pilot program to demonstrate the advantages of public-private partnerships for certain fixed guideway systems development projects.

''(ii) IDENTIFICATION OF QUALIFIED PROJECTS.—The Secretary shall identify qualified public-private partnership projects as permitted by applicable State and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.''.

(h) FEDERAL SHARE OF NET PROJECT COST.—Section 5309(h) is amended to read as follows:

''(h) FEDERAL SHARE OF ADJUSTED NET PROJECT COST.—

''(1) IN GENERAL.—The Secretary shall estimate the net project cost based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities.

''(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a major capital investment project evaluated under subsections (e) and (f) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

''(3) MAXIMUM FEDERAL SHARE.—

''(A) IN GENERAL.—A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2), unless the grant recipient requests a lower grant percentage.

''(B) EXCEPTIONS.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

''(i) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

''(ii) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

''(4) OTHER SOURCES.—The costs not funded by a grant under this section may be funded from—

''(A) an undistributed cash surplus;

''(B) a replacement or depreciation cash fund or reserve; or

''(C) new capital, including any Federal funds that are eligible to be expended for transportation.

''(5) PLANNED EXTENSION TO FIXED GUIDEWAY SYSTEM.—In addition to amounts allowed under paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the Secretary determines that only non-Federal funds were used and that the purchase was made for use on the extension. A refund or reduction of the costs not funded by a grant under this section may be made

only if a refund of a proportional amount of the grant is made at the same time.

''(6) EXCEPTION.—The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to amounts allowed under paragraph (4).''.

(i) LOAN PROVISIONS AND FISCAL CAPACITY CONSIDERATIONS.—Section 5309 is amended—

(1) by striking subsections (i), (j), (k), and (*l*);

(2) by redesignating subsections (m) and (n) as subsections (i) and (j), respectively;

(3) by striking subsection (o) (as added by section 3009(i) of the Federal Transit Act of 1998); and

(4) by redesignating subsections (o) and (p) as subsections (k) and (*l*), respectively.

(j) ALLOCATING AMOUNTS.—Section 5309(i), as redesignated, is amended to read as follows:

''(i) ALLOCATING AMOUNTS.—

''(1) FISCAL YEAR 2004.—Of the amounts made available or appropriated for fiscal year 2004 under section 5338(a)(3)—

''(A) $1,315,983,615 shall be allocated for projects of not less than $75,000,000 for major capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and projects for new fixed guideway or corridor improvement capital projects under subsection (f);

''(B) $1,199,387,615 shall be allocated for capital projects for fixed guideway modernization; and

''(C) $603,617,520 shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(2) IN GENERAL.—Of the amounts made available or appropriated for fiscal year 2005 and each fiscal year thereafter for grants under this section pursuant to subsections (b)(4) and (c) of section 5338—

''(A) the amounts appropriated under section 5338(c) shall be allocated for major capital projects for—

''(i) new fixed guideway systems and extensions of not less than $75,000,000, in accordance with subsection (e); and

''(ii) projects for new fixed guideway or corridor improvement capital projects, in accordance with subsection (f); and

''(B) the amounts made available under section 5338(b)(4) shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(K) for fiscal year 2005 and each fiscal year thereafter shall be allocated in accordance with section 5337.

''(4) PRELIMINARY ENGINEERING.—Not more that 8 percent of the allocation described in paragraphs (1)(A) and (2)(A) may be expended on preliminary engineering.

''(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A), $10,400,000 shall be available in each of the fiscal years 2004 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.

''(6) BUS AND BUS FACILITY GRANTS.—

''(A) CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

''(B) PROJECTS NOT IN URBANIZED AREAS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

''(C) INTERMODAL TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than $75,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.''.

(k) REPORTS.—Section 5309 is amended by inserting at the end the following:

''(m) REPORTS.—

''(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

''(A) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

''(i) a proposal on the allocation of amounts to finance grants for capital investment projects among grant applicants;

''(ii) a recommendation of projects to be funded based on—

''(I) the evaluations and ratings determined under subsection (e) and (f); and

''(II) existing commitments and anticipated funding levels for the subsequent 3 fiscal years; and

''(iii) detailed ratings and evaluations on each project recommended for funding.

''(2) TRIENNIAL REPORTS ON PROJECT RATINGS.—

''(A) IN GENERAL.—Not later than the first Monday of February, the first Monday of June, and the first Monday of October of each year, the Secretary shall submit a report on project ratings to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

''(i) a summary of the ratings of all capital investment projects for which funding was requested under this section;

''(ii) detailed ratings and evaluations on the project of each applicant that had significant changes to the finance or project proposal or has completed alternatives analysis or preliminary engineering since the date of the latest report; and

''(iii) all relevant information supporting the evaluation and rating of each updated project, including a summary of the financial plan of each updated project.

''(3) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

''(A) the Committee on Transportation and Infrastructure of the House of Representatives;

''(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(C) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(D) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(4) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

''(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, and each year thereafter, the Secretary shall submit a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—

''(i) estimates made at the time projects are approved for entrance into final design;

''(ii) costs and ridership when the project commences revenue operation; and

''(iii) costs and ridership when the project has been in operation for 2 years.

''(5) ANNUAL GENERAL ACCOUNTING OFFICE REVIEW.—

''(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary's implementation of such processes and procedures.

''(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (1), the Comptroller General shall submit a report to Congress that summarizes the results of the review conducted under subparagraph (A).

''(6) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report to the committees and subcommittees listed under paragraph (3) on the suitability of allowing contractors to public transportation agencies that undertake major capital investments under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.''.

SEC. 3012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

(a) IN GENERAL.—Section 5310 is amended to read as follows:

''§ 5310. New freedom for elderly persons and persons with disabilities

''(a) GENERAL AUTHORITY.—

''(1) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

''(2) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

''(3) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts received under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(b) ALLOTMENTS AMONG STATES.—

''(1) IN GENERAL.—From amounts made available or appropriated in each fiscal year under subsections (a)(1)(C)(iv) and (b)(2)(D) of section 5338 for grants under this section, the Secretary shall allot amounts to each State under a formula based on the number of elderly individuals and individuals with disabilities in each State.

''(2) TRANSFER OF FUNDS.—Any funds allotted to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if

such funds are only used for eligible projects selected under this section.

''(3) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

''(A) a private nonprofit organization;

''(B) a public transportation agency or authority; or

''(C) a governmental authority that—

''(i) has been approved by the State to coordinate services for elderly individuals and individuals with disabilities;

''(ii) certifies that nonprofit organizations are not readily available in the area that can provide the services described under this subsection; or

''(iii) will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

''(c) FEDERAL SHARE.—

''(1) MAXIMUM.—

''(A) IN GENERAL.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(d) of title 23 shall receive an increased Federal share in accordance with the formula under that section.

''(2) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section—

''(A) may be funded from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

''(B) may be derived from amounts appropriated to or made available to any Federal agency (other than the Department of Transportation, except for Federal Lands Highway funds) that are eligible to be expended for transportation.

''(3) EXCEPTION.—For purposes of paragraph (2), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(d) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant recipient under this section shall be subject to the requirements of a grant recipient under section 5307 to the extent the Secretary determines to be appropriate.

''(2) CERTIFICATION REQUIREMENTS.—

''(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

''(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this section shall certify that—

''(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

''(C) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

''(e) STATE PROGRAM OF PROJECTS.—

''(1) SUBMISSION TO SECRETARY.—Each State shall annually submit a program of transportation projects to the Secretary for approval with an assurance that the program provides for maximum feasible coordination between transportation services funded under this section and transportation services assisted by other Federal sources.

''(2) USE OF FUNDS.—Each State may use amounts made available to carry out this section to provide transportation services for elderly individuals and individuals with disabilities if such services are included in an approved State program of projects.

''(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the needs of elderly individuals and individuals with disabilities.

''(g) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

''(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

''(i) FARES NOT REQUIRED.—This section does not require that elderly individuals and individuals with disabilities be charged a fare.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5310 in the table of sections for chapter 53 is amended to read as follows:

''5310. New freedom for elderly persons and persons with disabilities.''.

SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

(a) DEFINITIONS.—Section 5311(a) is amended to read as follows:

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.''.

(b) GENERAL AUTHORITY.—Section 5311(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) GRANTS AUTHORIZED.—Except as provided under paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

''(A) public transportation capital projects;

''(B) operating costs of equipment and facilities for use in public transportation; and

''(C) the acquisition of public transportation services.'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

''(2) STATE PROGRAM.—

''(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

''(B) SUBMISSION TO SECRETARY.—Each State shall annually submit the program described in subparagraph (A) to the Secretary.

''(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

''(i) the program provides a fair distribution of amounts in the State; and

''(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources.'';

(4) in paragraph (3), as redesignated—

(A) by striking ''(3) The Secretary of Transportation'' and inserting the following:

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary'';

(B) by striking ''make'' and inserting ''use not more than 2 percent of the amount made available to carry out this section to award''; and

(C) by adding at the end the following:

''(B) DATA COLLECTION.—

''(i) REPORT.—Each grantee under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(I) total annual revenue;

''(II) sources of revenue;

''(III) total annual operating costs;

''(IV) total annual capital costs;

''(V) fleet size and type, and related facilities;

''(VI) revenue vehicle miles; and

''(VII) ridership.''; and

(5) by adding after paragraph (3) the following:

''(4) Of the amount made available to carry out paragraph (3)—

''(A) not more than 15 percent may be used to carry out projects of a national scope; and

''(B) any amounts not used under subparagraph (A) shall be allocated to the States.''.

(c) APPORTIONMENTS.—Section 5311(c) is amended to read as follows:

''(c) APPORTIONMENTS.—

''(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

''(A) $6,000,000 for fiscal year 2005.

''(B) $8,000,000 for fiscal year 2006.

''(C) $10,000,000 for fiscal year 2007.

''(D) $12,000,000 for fiscal year 2008.

''(E) $15,000,000 for fiscal year 2009.

''(2) REMAINING AMOUNTS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338 that are not apportioned under paragraph (1)—

''(A) 20 percent shall be apportioned to the States in accordance with paragraph (3); and

''(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).

''(3) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

''(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (2)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

''(4) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (2)(B) multiplied

by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.''.

(d) USE FOR ADMINISTRATIVE, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) by striking ''AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation'' and inserting '', PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary'';

(2) by striking ''to a recipient''; and

(3) by striking paragraph (2).

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—''; and

(B) by striking ''after September 30, 1993,''; and

(2) in paragraph (2)—

(A) by striking ''A State'' and inserting ''After consultation with affected intercity bus service providers, a State''; and

(B) by striking ''of Transportation''.

(f) FEDERAL SHARE OF COSTS.—Section 5311(g) is amended to read as follows:

''(g) FEDERAL SHARE OF COSTS.—

''(1) MAXIMUM FEDERAL SHARE.—

''(A) CAPITAL PROJECTS.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant awarded under this section for any purpose other than operating assistance may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Federal share of the net capital costs in accordance with the formula under that section.

''(B) OPERATING ASSISTANCE.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Federal share of the net operating costs equal to 62.5 percent of the Federal share provided for under subparagraph (A)(ii).

''(2) OTHER FUNDING SOURCES.—Funds for a project under this section that are not provided for by a grant under this section—

''(A) may be provided from—

''(i) an undistributed cash surplus;

''(ii) a replacement or depreciation cash fund or reserve;

''(iii) a service agreement with a State or local social service agency or a private social service organization; or

''(iv) new capital; and

''(B) may be derived from amounts appropriated to or made available to a Federal agency (other than the Department of Transportation, except for Federal Land Highway funds) that are eligible to be expended for transportation.

''(3) USE OF FEDERAL GRANT.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Federal grant for the payment of operating expenses.

''(4) EXCEPTION.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(c)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(c)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.''.

(g) WAIVER CONDITION.—Section 5311(j)(1) is amended by striking ''but the Secretary of Labor may waive the application of section 5333(b)'' and inserting ''if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees''.

SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

(a) IN GENERAL.—Section 5312 is amended—

(1) by amending subsection (a) to read as follows:

''(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with departments, agencies, and instrumentalities of the United States Government) for research, development, demonstration or deployment projects, or evaluation of technology of national significance to public transportation that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

''(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

''(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under any other law.'';

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as (b) and (c), respectively.

(4) in subsection (b), as redesignated—

(A) in paragraph (2), by striking ''other agreements'' and inserting ''other transactions''; and

(B) in paragraph (5), by striking ''within the Mass Transit Account of the Highway Trust Fund''; and

(5) in subsection (c), as redesignated—

(A) in paragraph (2), by striking ''public and private'' and inserting ''public or private''; and

(B) in paragraph (3), by striking ''within the Mass Transit Account of the Highway Trust Fund'' .

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5312 is amended to read as follows:

''§ 5312. Research, development, demonstration, and deployment projects''.

(2) TABLE OF SECTIONS.—The item relating to section 5312 in the table of sections for chapter 53 is amended to read as follows:

''5312. Research, development, demonstration, and deployment projects.''.

SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 5313 is amended—

(1) by striking subsection (b);

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1) The amounts made available under paragraphs (1) and (2)C)(ii) of section 5338(c) of this title'' and inserting ''The amounts made available under subsections (a)(5)(C)(iii) and (b)(2)(G)(i) of section 5338''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(b) FEDERAL ASSISTANCE.—''; and

(3) by amending subsection (c) to read as follows:

''(c) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Federal share consistent with such benefit.''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5313 is amended to read as follows:

''§ 5313. Transit cooperative research program''.

(2) TABLE OF SECTIONS.—The item relating to section 5313 in the table of sections for chapter 53 is amended to read as follows:

''5313. Transit cooperative research program.''.

SEC. 3016. NATIONAL RESEARCH PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) AVAILABILITY OF FUNDS.—The Secretary may use amounts made available under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338 for grants, contracts, cooperative agreements, or other transactions for the purposes described in sections 5312, 5315, and 5322.'';

(B) in paragraph (2), by striking ''(2) Of'' and inserting the following:

''(2) ADA COMPLIANCE.—From'';

(C) by amending paragraph (3) to read as follows:

''(3) SPECIAL DEMONSTRATION INITIATIVES.—The Secretary may use not more than 25 percent of the amounts made available under paragraph (1) for special demonstration initiatives, subject to terms that the Secretary determines to be consistent with this chapter. For a nonrenewable grant of not more than $100,000, the Secretary shall provide expedited procedures for complying with the requirements of this chapter.'';

(D) in paragraph (4)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(E) by adding at the end the following:

''(6) MEDICAL TRANSPORTATION DEMONSTRATION GRANTS.—

''(A) GRANTS AUTHORIZED.—The Secretary may award demonstration grants, from funds made available under paragraph (1), to eligible entities to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(B) ELIGIBLE ENTITIES.—An entity shall be eligible to receive a grant under this paragraph if the entity—

''(i) meets the conditions described in section 501(c)(3) of the Internal Revenue Code of 1986; or

''(ii) is an agency of a State or unit of local government.

''(C) USE OF FUNDS.—Grant funds received under this paragraph may be used to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(D) APPLICATION.—

''(i) IN GENERAL.—Each eligible entity desiring a grant under this paragraph shall submit an application to the Secretary at such time, at such place, and containing such information as the Secretary may reasonably require.

''(ii) SELECTION OF GRANTEES.—In awarding grants under this paragraph, the Secretary shall give preference to eligible entities from communities with—

''(I) high incidence of renal disease; and

''(II) limited access to dialysis facilities.

''(E) RULEMAKING.—The Secretary shall issue regulations to implement and administer the grant program established under this paragraph.

''(F) REPORT.—The Secretary shall submit a report on the results of the demonstration projects funded under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.''; and

(2) by amending subsection (b) to read as follows:

''(b) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other transaction financed under subsection (a) or section 5312, 5313,

5315, or 5322, the Secretary shall establish a Federal share consistent with such benefit.''.

(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION; ALTERNATIVE FUELS STUDY.—Section 5314 is amended by adding at the end the following:

''(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION.—

''(1) ESTABLISHMENT.—The Secretary shall award grants to a national not-for-profit organization for the establishment and maintenance of a national technical assistance center.

''(2) ELIGIBILITY.—An organization shall be eligible to receive the grant under paragraph (1) if the organization—

''(A) focuses significantly on serving the needs of the elderly;

''(B) has demonstrated knowledge and expertise in senior transportation policy and planning issues;

''(C) has affiliates in a majority of the States;

''(D) has the capacity to convene local groups to consult on operation and development of senior transportation programs; and

''(E) has established close working relationships with the Federal Transit Administration and the Administration on Aging.

''(3) USE OF FUNDS.—The national technical assistance center established under this section shall—

''(A) gather best practices from throughout the country and provide such practices to local communities that are implementing senior transportation programs;

''(B) work with teams from local communities to identify how they are successfully meeting the transportation needs of senior and any gaps in services in order to create a plan for an integrated senior transportation program;

''(C) provide resources on ways to pay for senior transportation services;

''(D) create a web site to publicize and circulate information on senior transportation programs;

''(E) establish a clearinghouse for print, video, and audio resources on senior mobility; and

''(F) administer the demonstration grant program established under paragraph (4).

''(4) GRANTS AUTHORIZED.—

''(A) IN GENERAL.—The national technical assistance center established under this section, in consultation with the Federal Transit Administration, shall award senior transportation demonstration grants to—

''(i) local transportation organizations;

''(ii) State agencies;

''(iii) units of local government; and

''(iv) nonprofit organizations.

''(B) USE OF FUNDS.—Grant funds received under this paragraph may be used to—

''(i) evaluate the state of transportation services for senior citizens;

''(ii) recognize barriers to mobility that senior citizens encounter in their communities;

''(iii) establish partnerships and promote coordination among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens;

''(iv) identify future transportation needs of senior citizens within local communities; and

''(v) establish strategies to meet the unique needs of healthy and frail senior citizens.

''(C) SELECTION OF GRANTEES.—The Secretary shall select grantees under this subsection based on a fair representation of various geographical locations throughout the United States.

''(5) ALLOCATIONS.—From the funds made available for each fiscal year under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338, $3,000,000 shall be allocated to carry out this subsection.

''(d) ALTERNATIVE FUELS STUDY.—

''(1) STUDY.—The Secretary shall conduct a study of the actions necessary to facilitate the purchase of increased volumes of alternative fuels (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) for use in public transit vehicles

''(2) SCOPE OF STUDY.—The study conducted under this subsection shall focus on the incentives necessary to increase the use of alternative fuels in public transit vehicles, including buses, fixed guideway vehicles, and ferries.

''(3) CONTENTS.—The study shall consider—

''(A) the environmental benefits of increased use of alternative fuels in transit vehicles;

''(B) existing opportunities available to transit system operators that encourage the purchase of alternative fuels for transit vehicle operation;

''(C) existing barriers to transit system operators that discourage the purchase of alternative fuels for transit vehicle operation, including situations where alternative fuels that do not require capital improvements to transit vehicles are disadvantaged over fuels that do require such improvements; and

''(D) the necessary levels and type of support necessary to encourage additional use of alternative fuels for transit vehicle operation.

''(4) RECOMMENDATIONS.—The study shall recommend regulatory and legislative alternatives that will result in the increased use of alternative fuels in transit vehicles.

''(5) REPORT.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit the study completed under this subsection to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives''.

(c) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 5314 is amended to read as follows:

''§ 5314. National research programs''.

(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

''5314. National research programs.''.

SEC. 3017. NATIONAL TRANSIT INSTITUTE.

(a) Section 5315 is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ESTABLISHMENT.—The Secretary shall award a grant to Rutgers University to conduct a national transit institute.

''(b) DUTIES.—

''(1) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established pursuant to subsection (a) shall develop and conduct training programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

''(2) TRAINING PROGRAMS.—The training programs developed under paragraph (1) may include courses in recent developments, techniques, and procedures related to—

''(A) intermodal and public transportation planning;

''(B) management;

''(C) environmental factors;

''(D) acquisition and joint use rights of way;

''(E) engineering and architectural design;

''(F) procurement strategies for public transportation systems;

''(G) turnkey approaches to delivering public transportation systems;

''(H) new technologies;

''(I) emission reduction technologies;

''(J) ways to make public transportation accessible to individuals with disabilities;

''(K) construction, construction management, insurance, and risk management;

''(L) maintenance;

''(M) contract administration;

''(N) inspection;

''(O) innovative finance;

''(P) workplace safety; and

''(Q) public transportation security.''; and

(2) in subsection (d), by striking ''mass'' each place it appears.

SEC. 3018. BUS TESTING FACILITY.

Section 5318 is amended—

(1) in subsection (a)—

(A) by striking ''ESTABLISHMENT.—The Secretary of Transportation shall establish one facility'' and inserting ''IN GENERAL.—The Secretary shall maintain 1 facility''; and

(B) by striking ''established by renovating'' and inserting ''maintained at''; and

(2) in subsection (d), by striking ''section 5309(m)(1)(C) of this title'' and inserting ''paragraphs (1)(C) and (2)(B) of section 5309(i)''.

SEC. 3019. BICYCLE FACILITIES.

Section 5319 is amended by striking ''5307(k)'' and inserting ''5307(d)(1)(K)''.

SEC. 3020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

Section 5320 is repealed.

SEC. 3021. CRIME PREVENTION AND SECURITY.

Section 5321 is repealed.

SEC. 3022. GENERAL PROVISIONS ON ASSISTANCE.

Section 5323 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

''(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

''(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

''(C) just compensation under State or local law will be paid to the company for its franchise or property.''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(2) LIMITATION.—'';

(2) by amending subsection (b) to read as follows:

''(b) NOTICE AND PUBLIC HEARING.—

''(1) IN GENERAL.—An application for a grant under this chapter for a capital project that will substantially affect a community, or the public transportation service of a community, shall include, in the environmental record for the project, evidence that the applicant has—

''(A) provided an adequate opportunity for public review and comment on the project;

''(B) held a public hearing on the project if the project affects significant economic, social, or environmental interests;

''(C) considered the economic, social, and environmental effects of the project; and

''(D) found that the project is consistent with official plans for developing the urban area.

''(2) CONTENTS OF NOTICE.—Notice of a hearing under this subsection—

''(A) shall include a concise description of the proposed project; and

''(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.'';

(3) by amending subsection (c) to read as follows:

''(c) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.'';

(4) by amending subsection (d) to read as follows:

''(d) CONDITIONS ON BUS TRANSPORTATION SERVICE.—Financial assistance under this chapter may be used to buy or operate a bus only if the recipient agrees to comply with the following conditions on bus transportation service:

''(1) CHARTER BUS SERVICE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), a recipient may provide incidental charter bus service only within its lawful service area if—

''(i) the recipient annually publishes, by electronic and other appropriate means, a notice—

''(I) indicating its intent to offer incidental charter bus service within its lawful service area; and

''(II) soliciting notices from private bus operators that wish to appear on a list of carriers offering charter bus service in that service area;

''(ii) the recipient provides private bus operators with an annual opportunity to notify the recipient of its desire to appear on a list of carriers offering charter bus service in such service area;

''(iii) upon receiving a request for charter bus service, the recipient electronically notifies the private bus operators listed as offering charter service in that service area with the name and contact information of the requestor and the nature of the charter service request; and

''(iv) the recipient does not offer to provide charter bus service unless no private bus operator indicates that it is willing and able to provide the service within a 72-hour period after the receipt of such notice.

''(B) EXCEPTION.—A recipient that operates 2,000 or fewer vehicles in fixed-route peak hour service may provide incidental charter bus transportation directly to —

''(i) local governments; and

''(ii) social service entities with limited resources.

''(C) IRREGULARLY SCHEDULED EVENTS.—Service, other than commuter service, by a recipient to irregularly scheduled events, where the service is conducted in whole or in part outside the service area of the recipient, regardless of whether the service is contracted for individually with passengers, is subject to a rebuttable presumption that such service is charter service.

''(2) VIOLATION OF AGREEMENTS.—

''(A) COMPLAINTS.—A complaint regarding the violation of a charter bus service agreement shall be submitted to the Regional Administrator of the Federal Transit Administration, who shall—

''(i) provide a reasonable opportunity for the recipient to respond to the complaint;

''(ii) provide the recipient with an opportunity for an informal hearing; and

''(iii) issue a written decision not later than 60 days after the parties have completed their submissions.

''(B) APPEALS.—

''(i) IN GENERAL.—A decision by the Regional Administrator may be appealed to a panel comprised of the Federal Transit Administrator, personnel in the Office of the Secretary of Transportation, and other persons with expertise in surface passenger transportation issues.

''(ii) STANDARD OF REVIEW.—The panel described in clause (i) shall consider the complaint de novo on all issues of fact and law.

''(iii) WRITTEN DECISION.—The appeals panel shall issue a written decision on an appeal not later than 60 days after the completion of submissions. This decision shall be the final order of the agency and subject to judicial review in district court.

''(C) CORRECTION.—If the Secretary determines that a violation of an agreement relating to the provision of charter service has occurred, the Secretary shall correct the violation under terms of the agreement.

''(D) REMEDIES.—The Secretary may issue orders to recipients to cease and desist in actions that violate the agreement, and such orders shall be binding upon the parties. In addition to any remedy spelled out in the agreement, if a recipient has failed to correct a violation within 60 days after the receipt of a notice of violation from the Secretary, the Secretary shall withhold from the recipient the lesser of—

''(i) 5 percent of the financial assistance available to the recipient under this chapter for the next fiscal year; or

''(ii) $200,000.

''(3) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue amended regulations that—

''(A) implement this subsection, as revised by such Act; and

''(B) impose restrictions, procedures, and remedies in connection with sightseeing service by a recipient.

''(4) PUBLIC NOTICE.—The Secretary shall make all written decisions, guidance, and other pertinent materials relating to the procedures in this subsection available to the public in electronic and other appropriate formats in a timely manner.'';

(5) by striking subsection (e);

(6) by redesignating subsection (f) as subsection (e);

(7) in subsection (e), as redesignated—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—'';

(B) by striking paragraph (2);

(C) by striking ''This subsection'' and inserting the following:

''(2) EXCEPTIONS.—This subsection; and

(D) by adding at the end the following:

''(3) PENALTY.—If the Secretary determines that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar the applicant, authority, or operator from receiving Federal transit assistance in an amount the Secretary determines to be appropriate.'';

(8) by inserting after subsection (e) the following:

''(f) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309, may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

''(2) REIMBURSEMENT BY SECRETARY.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient established pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309.'';

(9) in subsection (g)—

(A) by striking ''(f)'' each place it appears and inserting ''(e)''; and

(B) by striking ''103(e)(4) and 142 (a) or (c)'' each place it appears and inserting ''133 and 142'';

(10) by amending subsection (h) to read as follows:

''(h) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

''(1) REQUEST BY SECRETARY.—If the Secretary determines that any part of the lands or interests in lands owned by the United States and made available as a result of a military base closure is necessary for transit purposes eligible under this chapter, including corridor preservation, the Secretary shall submit a request to the head of the Federal agency supervising the administration of such lands or interests in lands. Such request shall include a map showing the portion of such lands or interests in lands, which is desired to be transferred for public transportation purposes.

''(2) TRANSFER OF LAND.—If 4 months after submitting a request under paragraph (1), the Secretary does not receive a response from the Federal agency described in paragraph (1) that certifies that the proposed appropriation of land is contrary to the public interest or inconsistent with the purposes for which such land has been reserved, or if the head of such agency agrees to the utilization or transfer under conditions necessary for the adequate protection and utilization of the reserve, such land or interests in land may be utilized or transferred to a State, local governmental authority, or public transportation operator for such purposes and subject to the conditions specified by such agency.

''(3) REVERSION.—If at any time the lands or interests in land utilized or transferred under paragraph (2) are no longer needed for public transportation purposes, the State, local governmental authority, or public transportation operator that received the land shall notify to the Secretary, and such lands shall immediately revert to the control of the head of the Federal agency from which the land was originally transferred.'';

(11) in subsection (j)(5), by striking ''Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)'' and inserting ''Federal Public Transportation Act of 2004'';

(12) by amending subsection (*l*) to read as follows:

''(l) RELATIONSHIP TO OTHER LAWS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter, if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal transit program.'';

(13) in subsection (m), by inserting at the end the following: ''Requirements to perform preaward and postdelivery reviews of rolling stock purchases to ensure compliance with subsection (j) shall not apply to private nonprofit organizations or to grantees serving urbanized areas with a population of fewer than 1,000,000.'';

(14) in subsection (*o*), by striking ''the Transportation Infrastructure Finance and Innovation Act of 1998'' and inserting ''sections 181 through 188 of title 23''; and

(15) by adding at the end the following:

''(p) PROHIBITED USE OF FUNDS.—Grant funds received under this chapter may not be used to pay ordinary governmental or nonproject operating expenses.''.

SEC. 3023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

(a) IN GENERAL.—Section 5324 is amended to read as follows:

"§ 5324. Special provisions for capital projects

''(a) REAL PROPERTY AND RELOCATION SERVICES.—Whenever real property is acquired or furnished as a required contribution incident to a project, the Secretary shall not approve the application for financial assistance unless the applicant has made all payments and provided all assistance and assurances that are required of a State agency under sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630 and 4655). The Secretary must be advised of specific references to any State law that are believed to be an exception to section 301 or 302 of such Act (42 U.S.C. 4651 and 4652).

''(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

''(1) IN GENERAL.—The Secretary may participate in the acquisition of real property for any project that may use the property if the Secretary determines that external market forces are jeopardizing the potential use of the property for the project and if—

''(A) there are offers on the open real estate market to convey that property for a use that is incompatible with the project under study;

''(B) there is an imminent threat of development or redevelopment of the property for a use that is incompatible with the project under study;

''(C) recent appraisals reflect a rapid increase in the fair market value of the property;

''(D) the property, because it is located near an existing transportation facility, is likely to be developed and to be needed for a future transportation improvement; or

''(E) the property owner can demonstrate that, for health, safety, or financial reasons, retaining ownership of the property poses an undue hardship on the owner in comparison to other affected property owners and requests the acquisition to alleviate that hardship.

''(2) ENVIRONMENTAL REVIEWS.—Property acquired in accordance with this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(3) LIMITATION.—The Secretary shall limit the size and number of properties acquired under this subsection as necessary to avoid any prejudice to the Secretary's objective evaluation of project alternatives.

''(4) EXEMPTION.—An acquisition under this section shall be considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

''(c) RAILROAD CORRIDOR PRESERVATION.—

''(1) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

''(2) ENVIRONMENTAL REVIEWS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

''(1) IN GENERAL.—The Secretary may not approve an application for financial assistance for a capital project under this chapter unless the Secretary determines that the project has been developed in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary's findings under this paragraph shall be made a matter of public record.

''(2) COOPERATION AND CONSULTATION.—In carrying out section 5301(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 is amended to read as follows:

''5324. Special provisions for capital projects.''.

SEC. 3024. CONTRACT REQUIREMENTS.

(a) IN GENERAL.—Section 5325 is amended to read as follows:

"§ 5325. Contract requirements

''(a) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

''(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

''(1) IN GENERAL.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

''(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

''(A) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

''(B) A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

''(C) After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

''(D) A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

''(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

''(d) DESIGN-BUILD PROJECTS.—

''(1) DEFINED TERM.—As used in this subsection, the term 'design-build project'—

''(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build an operable segment of a public transportation system that meets specific performance criteria; and

''(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

''(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

''(e) ROLLING STOCK.—

''(1) ACQUISITION.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

''(A) with a party selected through a competitive procurement process; or

''(B) based on—

''(i) initial capital costs; or

''(ii) performance, standardization, life cycle costs, and other factors.

''(2) MULTIYEAR CONTRACTS.—A recipient procuring rolling stock with Federal financial assistance under this chapter may make a multiyear contract, including options, to buy not more than 5 years of requirements for rolling stock and replacement parts. The Secretary shall allow a recipient to act on a cooperative basis to procure rolling stock under this paragraph and in accordance with other Federal procurement requirements.

''(f) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

''(g) GRANT PROHIBITION.—A grant awarded under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

''(h) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

''(i) AWARDS TO RESPONSIBLE CONTRACTORS.—

''(1) IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

''(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

''(A) the integrity of the contractor;

''(B) the contractor's compliance with public policy;

''(C) the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(m)(4); and

''(D) the contractor's financial and technical resources.''.

(b) CONFORMING AMENDMENTS.—Chapter 53 is amended by striking section 5326.

SEC. 3025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—Section 5327(a) is amended—

(1) in paragraph (11), by striking ''and'' at the end;

(2) in paragraph (12), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(13) safety and security management.''.

(b) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary may not use more than 1 percent of amounts made available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91–143) to make a contract to oversee the construction of major projects under any of sections 5307 through 5311, 5316, or 5317 or under that Act.'';

(2) in paragraph (2)—

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

''(2) OTHER ALLOWABLE USES.—''; and

(B) by inserting ''and security'' after ''safety''; and

(3) in paragraph (3), by striking ''(3) The Government shall'' and inserting the following:

''(3) FEDERAL SHARE.—Federal funds shall be used to''.

SEC. 3026. PROJECT REVIEW.

Section 5328 is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking ''(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant'' and inserting the following:

''(1) ALTERNATIVES ANALYSIS.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis under subsections (e) and (f) of section 5309'';

(B) in paragraph (2)—

(i) by striking ''(2)'' and inserting the following:

''(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—''; and

(ii) by striking ''is consistent with'' and inserting ''meets the requirements of'';

(C) in paragraph (3)—

(i) by striking ''(3)'' and inserting the following:

''(3) RECORD OF DECISION.—'';

(ii) by striking ''of construction''; and

(iii) by adding before the period at the end the following: ''if the Secretary determines that the project meets the requirements of subsection (e) or (f) of section 5309''; and

(D) by striking paragraph (4); and

(2) by striking subsection (c).

SEC. 3027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

''§ 5329. Investigation of safety hazards and security risks

''(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

''(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary establishes that a safety hazard or security risk warrants further protective measures, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for eliminating, mitigating, or correcting it.

''(c) WITHHOLDING OF FUNDS.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.

''(d) PUBLIC TRANSPORTATION SECURITY.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall enter into a memorandum of understanding with the Secretary of Homeland Security to define and clarify the respective roles and responsibilities of the Department of Transportation and the Department of Homeland Security relating to public transportation security.

''(2) CONTENTS.—The memorandum of understanding described in paragraph (1) shall—

''(A) establish national security standards for public transportation agencies;

''(B) establish funding priorities for grants from the Department of Homeland Security to public transportation agencies;

''(C) create a method of coordination with public transportation agencies on security matters; and

''(D) address any other issues determined to be appropriate by the Secretary and the Secretary of Homeland Security.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5329 in the table of sections for chapter 53 is amended to read as follows:

''5329. Investigation of safety hazards and security risks.''.

SEC. 3028. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by amending the heading to read as follows:

''§ 5330. Withholding amounts for noncompliance with State safety oversight requirements'';

(2) by amending subsection (a) to read as follows:

''(a) APPLICATION.—This section shall only apply to—

''(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

''(2) States that are designing rail fixed guideway public transportation systems that will not be subjected to regulation by the Federal Railroad Administration.'';

(3) in subsection (d), by striking ''affected States'' and inserting the following: ''affected States—

''(1) shall ensure uniform safety standards and enforcement; or

''(2) may designate''; and

(4) in subsection (f), by striking ''Not later than December 18, 1992, the'' and inserting ''The''.

(b) CONFORMING AMENDMENT.—The item relating to section 5330 in the table of sections for chapter 53 is amended to read as follows:

''5330. Withholding amounts for noncompliance with State safety oversight requirements.''.

SEC. 3029. SENSITIVE SECURITY INFORMATION.

Section 40119(b) is amended—

(1) in paragraph (1)(C), by inserting '', transportation facilities or infrastructure, or transportation employees'' before the period at the end; and

(2) by adding at the end the following:

''(3) A State or local government may not enact, enforce, prescribe, issue, or continue in effect any law, regulation, standard, or order to the extent it is inconsistent with this section or regulations prescribed under this section.''.

SEC. 3030. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Section 1993 of title 18, United States Code, is amended—

(1) by striking ''mass'' each place it appears and inserting ''public'';

(2) in subsection (a)(5), by inserting ''controlling,'' after ''operating''; and

(3) in subsection (c)(5), by striking ''5302(a)(7) of title 49, United States Code,'' and inserting ''5302(a) of title 49,''.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 97 of title 18, United States Code is amended by amending the item related to section 1993 to read as follows:

''1993. Terrorist attacks and other acts of violence against public transportation systems.''.

SEC. 3031. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(3), by inserting before the period at the end the following: ''or sections 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or other Federal agency''; and

(2) in subsection (f), by striking paragraph (3).

SEC. 3032. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 5333(b) is amended—

(1) in paragraph (3), by striking the period at the end and inserting '', provided that—

''(A) the protective period shall not exceed 4 years; and

''(B) the separation allowance shall not exceed 12 months.''; and

(2) by adding at the end the following:

''(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (2).

''(5) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and amendments to existing assistance agreements, shall be certified without referral.

''(6) Nothing in this subsection shall affect the level of protection provided to freight railroad employees.''.

SEC. 3033. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''5309–5311 of this title'' and all that follows and inserting ''5309 through 5311;'';

(B) in paragraph (9), by striking ''and'' at the end;

(C) in paragraph (10), by striking the period at the end and inserting ''; and''; and

(D) by inserting at the end the following:

''(11) issue regulations as necessary to carry out the purposes of this chapter.'';

(2) by redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively;

(3) by adding after subsection (a) the following:

''(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

''(1) IN GENERAL.—Except as directed by the President for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate—

''(A) the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter; or

''(B) the rates, fares, tolls, rentals, or other charges prescribed by any public or private transportation provider.

''(2) COMPLIANCE WITH AGREEMENT.—Nothing in this subsection shall prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.''; and

(4) in subsection (j)(1), as redesignated, by striking ''carry out section 5312(a) and (b)(1) of this title'' and inserting ''advise and assist the Secretary in carrying out section 5312(a)''.

SEC. 3034. REPORTS AND AUDITS.

Section 5335 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1)''; and

(B) in paragraph (2), by striking ''(2) The Secretary may make a grant under section 5307 of this title'' and inserting the following:

''(b) REPORTING AND UNIFORM SYSTEMS.—The Secretary may award a grant under section 5307 or 5311''.

SEC. 3035. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 is amended—

(1) by striking subsection (d);

(2) by striking subsection (h);

(3) by striking subsection (k);

(4) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(5) by adding before subsection (b), as redesignated, the following:

''(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(L) of section 5338—

''(1) there shall be apportioned, in fiscal year 2005 and each fiscal year thereafter, $35,000,000 to certain urbanized areas with populations of less than 200,000 in accordance with subsection (k); and

''(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (b) through (d).'';

(6) in subsection (b), as redesignated—

(A) by striking ''Of the amount made available or appropriated under section 5338(a) of this title'' and inserting ''Of the amount apportioned under subsection (a)(3)''; and

(B) in paragraph (2), by striking ''subsections (b) and (c) of this section'' and inserting ''subsections (c) and (d)'';

(7) in subsection (c)(2), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(8) in subsection (d), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(9) in subsection (e)(1), by striking ''subsections (a) and (h)(2) of section 5338 of this title'' and inserting ''subsections (a) and (b) of section 5338'';

(10) in subsection (g), by striking ''subsection (a)(1) of this section'' each place it appears and inserting ''subsection (b)(1)''; and

(11) by adding at the end the following:

''(k) SMALL TRANSIT INTENSIVE CITIES FACTORS.—The amount apportioned under subsection (a)(1) shall be apportioned to urbanized areas as follows:

''(1) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

''(2) The Secretary shall designate as eligible for an apportionment under this subsection all urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under paragraph (1).

''(3) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under paragraph (1).

''(4) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle hours within that urbanized area less the amount calculated in paragraph (3).

''(5) Each urbanized area qualifying for an apportionment under paragraph (2) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under paragraph (4) divided by the sum of the amounts calculated under paragraph (4) for all urbanized areas qualifying for an apportionment under paragraph (2).

''(l) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

''(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

''(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

''(ii) the optimal number and size of any incentive programs;

''(iii) what types of systems should compete for various incentives;

''(iv) how incentives should be distributed; and

''(v) the likely effects of the incentive funding system.''.

SEC. 3036. APPORTIONMENTS FOR FIXED GUIDEWAY MODERNIZATION.

Section 5337 is amended—

(1) in subsection (a), by striking ''for each of fiscal years 1998 through 2003''; and

(2) by striking ''section 5336(b)(2)(A)'' each place it appears and inserting ''section 5336(c)(2)(A)''.

SEC. 3037. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

''§ 5338. Authorizations

''(a) FISCAL YEAR 2004.—

''(1) FORMULA GRANTS.—

''(A) TRUST FUND.—For fiscal year 2004, $3,053,079,920 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $763,269,980 for fiscal year 2004 to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $4,821,335 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

''(ii) $6,908,995 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(iii) $90,117,950 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

''(iv) $239,188,058 shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(v) $3,425,608,562 shall be available to provide financial assistance for urbanized areas under section 5307; and

''(vi) $49,705,000 shall be available to provide financial assistance for buses and bus facilities under section 5309..

''(2) JOB ACCESS AND REVERSE COMMUTE.—

''(A) TRUST FUND.—For fiscal year 2004, $99,410,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 3037 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note).

''(B) GENERAL FUND.—In addition to the amounts made available under paragraph (A), there are authorized to be appropriated $24,852,500 for fiscal year 2004 to carry out section 3037 of the Transportation Equity Act of the 21st Century (49 U.S.C. 5309 note).

''(3) CAPITAL PROGRAM GRANTS.—

''(A) TRUST FUND.—For fiscal year 2004, $2,495,191,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $623,797,750 for fiscal year 2004 to carry out section 5309.

''(4) PLANNING.—

''(A) TRUST FUND.—For fiscal year 2004, $58,254,260 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5308.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $14,315,040 for fiscal year 2004 to carry out section 5308.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) 82.72 percent shall be allocated for metropolitan planning under section 5308(c); and

''(ii) 17.28 percent shall be allocated for State planning under section 5308(d).

''(5) RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2004, $41,951,020 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $10,736,280 for fiscal year 2004 to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(C) ALLOCATION OF FUNDS.—Of the funds made available or appropriated under this paragraph—

''(i) not less than $3,976,400 shall be available to carry out programs of the National Transit Institute under section 5315;

''(ii) not less than $5,219,025 shall be available to carry out section 5311(b)(2);

''(iii) not less than $8,201,325 shall be available to carry out section 5313; and

''(iv) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

''(6) UNIVERSITY TRANSPORTATION RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2004, $4,771,680 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5505 and 5506.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $1,192,920 for fiscal year 2004 to carry out sections 5505 and 5506.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $1,988,200 shall be available for grants under 5506(f)(5) to the institution identified in section 5505(j)(3)(E), as in effect on the day

before the date of enactment of the Federal Public Transportation Act of 2004;

''(ii) $1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(A), as in effect on the date specified in clause (i); and

''(iii) $1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(F), as in effect on the date specified in subclause (I).

''(C) SPECIAL RULE.—Nothing in this paragraph shall be construed to limit the transportation research conducted by the centers receiving financial assistance under this section.

''(7) ADMINISTRATION.—

''(A) TRUST FUND.—For fiscal year 2004, $60,043,640 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $15,010,910 for fiscal year 2004 to carry out section 5334.

''(8) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(A) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available under paragraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(B) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance under paragraph (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or (7)(B) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

''(9) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.''.

''(b) FORMULA GRANTS AND RESEARCH.—

''(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5309, 5310 through 5316, 5322, 5335, 5340, and 5505 of this title, and sections 3037 and 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

''(A) $6,262,600,000 for fiscal year 2005;

''(B) $6,577,629,000 for fiscal year 2006;

''(C) $6,950,400,000 for fiscal year 2007;

''(D) $7,594,760,000 for fiscal year 2008; and

''(E) $8,275,320,000 for fiscal year 2009.

''(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1) for each fiscal year—

''(A) 0.092 percent shall be available for grants to the Alaska Railroad under section 5307 for improvements to its passenger operations;

''(B) 1.75 percent shall be available to carry out section 5308;

''(C) 2.05 percent shall be available to provide financial assistance for job access and reverse commute projects under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note);

''(D) 3.00 percent shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

''(E) 0.125 percent shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(F) 6.25 percent shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(G) 0.89 percent shall be available to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5505, and national research programs under sections 5312, 5313, 5314, and 5322, of which—

''(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5313;

''(ii) 7.5 percent shall be allocated to carry out programs under the National Transit Institute under section 5315, including not more than $1,000,000 to carry out section 5315(a)(16);

''(iii) 11.0 percent shall be allocated to carry out the university centers program under section 5505; and

''(iv) any funds made available under this subparagraph that are not allocated under clauses (i) through (iii) shall be allocated to carry out national research programs under sections 5312, 5313, 5314, and 5322;

''(H) $25,000,000 shall be available for each of the fiscal years 2005 through 2009 to carry out section 5316;

''(I) there shall be available to carry out section 5335—

''(i) $3,700,000 in fiscal year 2005;

''(iii) $3,900,000 in fiscal year 2006;

''(iv) $4,200,000 in fiscal year 2007;

''(v) $4,600,000 in fiscal year 2008; and

''(vi) $5,000,000 in fiscal year 2009;

''(J) 6.25 percent shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and

''(K) 22.0 percent shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(i)(3); and

''(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

''(3) UNIVERSITY CENTERS PROGRAM.—

''(A) ALLOCATION.—Of the amounts allocated under paragraph (2)(G)(iii), $1,000,000 shall be available in each of the fiscal years 2005 through 2009 for Morgan State University to provide transportation research, training, and curriculum development.

''(B) REQUIREMENTS.—The university specified under subparagraph (A) shall be considered a University Transportation Center under section 510 of title 23, and shall be subject to the requirements under subsections (c), (d), (e), and (f) of such section.

''(C) REPORT.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university's contribution to public transportation.

''(4) BUS GRANTS.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309(i)(2)(B)—

''(A) $839,829,000 for fiscal year 2005;

''(B) $882,075,000 for fiscal year 2006;

''(C) $932,064,000 for fiscal year 2007;

''(D) $1,018,474,000 for fiscal year 2008; and

''(E) $1,109,739,000 for fiscal year 2009.

''(c) MAJOR CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(i)(2)(A)—

''(1) $1,461,072,000 for fiscal year 2005;

''(2) $1,534,568,000 for fiscal year 2006;

''(3) $1,621,536,000 for fiscal year 2007;

''(4) $1,771,866,000 for fiscal year 2008; and

''(5) $1,930,641,000 for fiscal year 2009.

''(d) ADMINISTRATION.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

''(1) $86,500,000 for fiscal year 2005;

''(2) $90,851,000 for fiscal year 2006;

''(3) $96,000,000 for fiscal year 2007;

''(4) $104,900,000 for fiscal year 2008; and

''(5) $114,300,000 for fiscal year 2009.

''(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(1) MASS TRANSIT ACCOUNT FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1) or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(2) APPROPRIATED FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(2) or (c) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated in advance for such purpose by an Act of Congress.

''(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (b) and (c) shall remain available until expended.''.

SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS.

(a) IN GENERAL.—Chapter 53 is amended by adding at the end the following:

''§ 5340. Apportionments based on growing States and high density State formula factors

''(a) ALLOCATION.—Of the amounts made available for each fiscal year under section 5338(b)(2)(J), the Secretary shall apportion—

''(1) 50 percent to States and urbanized areas in accordance with subsection (b); and

''(2) 50 percent to States and urbanized areas in accordance with subsection (c).

''(b) GROWING STATE APPORTIONMENTS.—

''(1) APPORTIONMENT AMONG STATES.—The amounts apportioned under paragraph (a)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census. Such forecast shall be based on the population trend for each State between the most recent decennial census and the most recent estimate of population made by the Secretary of Commerce.

''(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (b)(2)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (b)(2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations

of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.

''(c) HIGH DENSITY STATE APPORTIONMENTS.—Amounts to be apportioned under subsection (a)(2) shall be apportioned as follows:

''(1) ELIGIBLE STATES.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

''(2) STATE URBANIZED LAND FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the product of the urban land area of urbanized areas in the State times 370 persons per square mile.

''(3) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).

''(4) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).

''(5) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts apportioned to each State under paragraph (4) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the population of all urbanized areas in that State divided by the total population of that State.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (a) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(6) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (c)(5)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (c)(5)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following:

''5340. Apportionments based on growing States and high density States formula factors.''.

SEC. 3039. JOB ACCESS AND REVERSE COMMUTE GRANTS.

Section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking ''means an individual'' and inserting the following: ''means—

''(A) an individual''; and

(ii) by striking the period at the end and inserting ''; or

''(B) an individual who is eligible for assistance under the State program of Temporary Assistance to Needy Families funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et. seq.) in the State in which the recipient of a grant under this section is located.''; and

(B) in paragraph (2), by striking ''development of'' each place it appears and inserting ''development and provision of'';

(2) in subsection (i), by amending paragraph (2) to read as follows:

''(2) COORDINATION.—

''(A) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

''(B) CERTIFICATION.—A recipient of funds under this section shall certify that—

''(i) the project has been derived from a locally developed, coordinated public transit human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.'';

(3) by amending subsection (j) to read as follows:

''(j) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) URBANIZED AREAS.—A grant awarded under this section to a public agency or private company engaged in public transportation in an urbanized area shall be subject to the all of the terms and conditions to which a grant awarded under section 5307 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(B) OTHER THAN URBANIZED AREAS.—A grant awarded under this section to a public agency or a private company engaged in public transportation in an area other than urbanized areas shall be subject to all of the terms and conditions to which a grant awarded under section 5311 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(C) NONPROFIT ORGANIZATIONS.—A grant awarded under this section to a private nonprofit organization shall be subject to all of the terms and conditions to which a grant made under section 5310 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(2) SPECIAL WARRANTY.—

''(A) IN GENERAL.—Section 5333(b) of title 49, United States Code, shall apply to grants under this section if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees.

''(B) WAIVER.—The Secretary may waive the applicability of the Special Warranty under subparagraph (A) for private non-profit recipients on a case-by-case basis as the Secretary considers appropriate.''; and

(4) by striking subsections (k) and (*l*).

SEC. 3040. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

(a) SECTION HEADING.—The section heading for section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note), is amended to read as follows:

''SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.''.

(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

''(g) FUNDING.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(iii) and (b)(2)(E) of section 5338 of title 49, United States Code—

''(1) 75 percent shall be available, and shall remain available until expended, for operators of over-the-road buses, used substantially or exclusively in intercity, fixed-route over-the-road bus service, to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses; and

''(2) 25 percent shall be available, and shall remain available until expended, for operators of over-the-road bus service not described in paragraph (1), to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses.''.

(b) CONFORMING AMENDMENT.—The item relating to section 3038 in the table of contents for the Transportation Equity Act for the 21st Century (Public Law 105–178) is amended to read as follows:

''Sec. 3038. Over-the-road bus accessibility program.''.

SEC. 3041. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5315 the following:

''§ 5316. Alternative transportation in parks and public lands

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—

''(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award a grant or enter into a contract, cooperative agreement, interagency agreement, intraagency agreement, or other transaction to carry out a qualified project under this section to enhance the protection of America's National Parks and public lands and increase the enjoyment of those visiting the parks and public lands by ensuring access to all, including persons with disabilities, improving conservation and park and public land opportunities in urban areas through partnering with state and local governments, and improving park and public land transportation infrastructure.

''(B) CONSULTATION WITH OTHER AGENCIES.—To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary of the Interior shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under this section.

''(2) USE OF FUNDS.—A grant, cooperative agreement, interagency agreement, intraagency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

''(b) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) ELIGIBLE AREA.—The term 'eligible area' means any federally owned or managed park, refuge, or recreational area that is open to the general public, including—

''(A) a unit of the National Park System;

''(B) a unit of the National Wildlife Refuge System;

''(C) a recreational area managed by the Bureau of Land Management; and

''(D) a recreation area managed by the Bureau of Reclamation.

''(2) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area.

''(3) ALTERNATIVE TRANSPORTATION.—The term 'alternative transportation' means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service.

''(4) QUALIFIED PARTICIPANT.—The term 'qualified participant' means—

''(A) a Federal land management agency; or

''(B) a State, tribal, or local governmental authority with jurisdiction over land in the

vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other Governmental or nongovernmental participant.

''(5) QUALIFIED PROJECT.—The term 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—

''(A) is an activity described in section 5302, 5303, 5304, 5308, or 5309(a)(1)(A);

''(B) involves—

''(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of this section with clean fuel vehicles; or

''(ii) the deployment of alternative transportation vehicles that introduce innovative technologies or methods;

''(C) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;

''(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);

''(E) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

''(F) is any other alternative transportation project that—

''(i) enhances the environment;

''(ii) prevents or mitigates an adverse impact on a natural resource;

''(iii) improves Federal land management agency resource management;

''(iv) improves visitor mobility and accessibility and the visitor experience;

''(v) reduces congestion and pollution (including noise pollution and visual pollution); or

''(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

''(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

''(1) technical assistance in alternative transportation;

''(2) interagency and multidisciplinary teams to develop Federal land management agency alternative transportation policy, procedures, and coordination; and

''(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

''(d) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(a)(2)(I) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

''(2) ADDITIONAL AMOUNTS.—Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this title or any other provision of law.

''(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5338(a)(2)(I) for any fiscal year.

''(e) PLANNING PROCESS.—In undertaking a qualified project under this section,

''(1) if the qualified participant is a Federal land management agency—

''(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

''(i) the metropolitan planning provisions under section 5303 of this title;

''(ii) the statewide planning provisions under section 5304 of this title; and

''(iii) the public participation requirements under section 5307(e); and

''(B) in the case of a qualified project that is at a unit of the National Park system, the planning process shall be consistent with the general management plans of the unit of the National Park system; and

''(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

''(A) comply with the metropolitan planning provisions under section 5303 of this title;

''(B) comply with the statewide planning provisions under section 5304 of this title;

''(C) comply with the public participation requirements under section 5307(e) of this title; and

''(D) consult with the appropriate Federal land management agency during the planning process.

''(f) COST SHARING.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, shall establish the agency share of net project cost to be provided under this section to a qualified participant.

''(2) In establishing the agency share of net project cost to be provided under this section, the Secretary shall consider—

''(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

''(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

''(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

''(D) the clear and direct benefit to the qualified participant; and

''(E) any other matters that the Secretary considers appropriate to carry out this section.

''(3) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

''(g) SELECTION OF QUALIFIED PROJECTS.—

''(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

''(2) In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

''(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

''(B) the location of the qualified project, to ensure that the selected qualified projects—

''(i) are geographically diverse nationwide; and

''(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

''(C) the size of the qualified project, to ensure that there is a balanced distribution;

''(D) the historical and cultural significance of a qualified project;

''(E) safety;

''(F) the extent to which the qualified project would—

''(i) enhance livable communities;

''(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

''(iii) reduce congestion; and

''(iv) improve the mobility of people in the most efficient manner; and

''(G) any other matters that the Secretary considers appropriate to carry out this section, including—

''(i) visitation levels;

''(ii) the use of innovative financing or joint development strategies; and

''(iii) coordination with gateway communities.

''(h) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

''(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

''(A) the qualified participant applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

''(2)(A) The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

''(B) The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

''(C) The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

''(i) RELATIONSHIP TO OTHER LAWS.—

''(1) SECTION 5307.—A qualified participant under this section shall be subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

''(2) OTHER REQUIREMENTS.—A qualified participant under this section is subject to any other terms, conditions, requirements, and provisions that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

''(3) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than $25,000,000—

''(A) the qualified project shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement, in accordance with section 5309(g); and

''(B) the qualified participant shall prepare a project management plan in accordance with section 5327(a).

''(i) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and disposition in accordance with

any property management regulations that the Secretary determines to be appropriate.

''(j) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other transactions for research, development, and deployment of new technologies in eligible areas that will—

''(A) conserve resources;

''(B) prevent or mitigate adverse environmental impact;

''(C) improve visitor mobility, accessibility, and enjoyment; and

''(D) reduce pollution (including noise pollution and visual pollution).

''(2) The Secretary may request and receive appropriate information from any source.

''(3) Grants, cooperative agreements, contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

''(k) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a state infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

''(*l*) REPORTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

''(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(B) the Committee on Transportation and Infrastructure of the House of Representatives.

''(2) ANNUAL AND SUPPLEMENTAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(m).''.

(b) CONFORMING AMENDMENTS.—The table of sections for chapter 53 is amended by inserting after the item relating to section 5315 the following:

''5316. Alternative transportation in parks and public lands.''.

SEC. 3042. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (c) of section 5338 of title 49, United States Code, shall not exceed—

(1) $7,265,876,900 for fiscal year 2004;

(2) $8,650,000,000 for fiscal year 2005;

(3) $9,085,123,000 for fiscal year 2006;

(4) $9,600,000,000 for fiscal year 2007;

(5) $10,490,000,000 for fiscal year 2008; and

(6) $11,430,000,000 for fiscal year 2009.

SEC. 3043. ADJUSTMENTS FOR THE SURFACE TRANSPORTATION EXTENSION ACT OF 2003.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2004 to each grant recipient under section 5338 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2003 (117 Stat. 1121).

(b) FIXED GUIDEWAY MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amount apportioned for fiscal year 2004 to each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in 5337(a) of title 49, United States Code.

SEC. 3044. DISADVANTAGED BUSINESS ENTERPRISE.

Section 1101(b) of the Transportation Equity Act of the 21st Century shall apply to all funds authorized or otherwise made available under this title.

SEC. 3045. INTERMODAL PASSENGER FACILITIES.

(a) IN GENERAL.—Chapter 55 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

§ 5571. Policy and purposes

''(a) DEVELOPMENT AND ENHANCEMENT OF INTERMODAL PASSENGER FACILITIES.—It is in the economic interest of the United States to improve the efficiency of public surface transportation modes by ensuring their connection with and access to intermodal passenger terminals, thereby streamlining the transfer of passengers among modes, enhancing travel options, and increasing passenger transportation operating efficiencies.

''(b) GENERAL PURPOSES.—The purposes of this subchapter are to accelerate intermodal integration among North America's passenger transportation modes through—

''(1) ensuring intercity public transportation access to intermodal passenger facilities;

''(2) encouraging the development of an integrated system of public transportation information; and

''(3) providing intercity bus intermodal passenger facility grants.

§ 5572. Definitions

''In this subchapter—

''(1) 'capital project' means a project for—

''(A) acquiring, constructing, improving, or renovating an intermodal facility that is related physically and functionally to intercity bus service and establishes or enhances coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, seaports, and the National Highway System, such as physical infrastructure associated with private bus operations at existing and new intermodal facilities, including special lanes, curb cuts, ticket kiosks and counters, baggage and package express storage, employee parking, office space, security, and signage; and

''(B) establishing or enhancing coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, and the National Highway System through an integrated system of public transportation information.

''(2) 'commuter service' means service designed primarily to provide daily work trips within the local commuting area.

''(3) 'intercity bus service' means regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available and may include package express service, if incidental to passenger transportation, but does not include air, commuter, water or rail service.

''(4) 'intermodal passenger facility' means passenger terminal that does, or can be modified to, accommodate several modes of transportation and related facilities, including some or all of the following: intercity rail, intercity bus, commuter rail, intracity rail transit and bus transportation, airport limousine service and airline ticket offices, rent-a-car facilities, taxis, private parking, and other transportation services.

''(5) 'local governmental authority' includes—

''(A) a political subdivision of a State;

''(B) an authority of at least one State or political subdivision of a State;

''(C) an Indian tribe; and

''(D) a public corporation, board, or commission established under the laws of the State.

''(6) 'owner or operator of a public transportation facility' means an owner or operator of intercity-rail, intercity-bus, commuter-rail, commuter-bus, rail-transit, bus-transit, or ferry services.

''(7) 'recipient' means a State or local governmental authority or a nonprofit organization that receives a grant to carry out this section directly from the Federal government.

''(8) 'Secretary' means the Secretary of Transportation.

''(9) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

''(10) 'urban area' means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in the locality.

''§ 5573. Assurance of access to intermodal passenger facilities

''Intercity buses and other modes of transportation shall, to the maximum extent practicable, have access to publicly funded intermodal passenger facilities, including those passenger facilities seeking funding under section 5574.

''§ 5574. Intercity bus intermodal passenger facility grants

''(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to recipients in financing a capital project only if the Secretary finds that the proposed project is justified and has adequate financial commitment.

''(b) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.

''(c) SHARE OF NET PROJECT COSTS.—A grant shall not exceed 50 percent of the net project cost, as determined by the Secretary.

''(d) REGULATIONS.—The Secretary may promulgate such regulations as are necessary to carry out this section.

''§ 5575. Funding

''(a) HIGHWAY ACCOUNT.—

''(1) There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter $10,000,000 for each of fiscal years 2005 through 2009.

''(2) The funding made available under paragraph (1) shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23 and shall be subject to any obligation limitation imposed on funds for Federal-aid highways and highway safety construction programs.

''(b) PERIOD OF AVAILABILITY.—Amounts made available under subsection (a) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 55 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

Sec.

''5571. Policy and Purposes.

''5572. Definitions.

''5573. Assurance of access to intermodal facilities.
''5574. Intercity bus intermodal facility grants.
''5575. Funding.''.

Beginning on page 1309 strike lines 17 thru page 1310 line 1 and insert the following:

(b) MASS TRANSIT CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the mass transit category is—

(1) for fiscal year 2004, $7,265,877,000;
(2) for fiscal year 2005, $8,650,000,000;
(3) for fiscal year 2006, $9,085,123,000;
(4) for fiscal year 2007, $9,600,000,000;
(5) for fiscal year 2008, $10,490,000,000 and
(6) for fiscal year 2009, $11,430,000,000.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, February 26 at 2:30 p.m.. in 366 Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to consider the nomination of Susan Johnson Grant, to be Chief Financial Officer, Department of Energy.

For further information, please contact Judy Pensabene of the Committee staff at (202) 224–1327.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, February 12, 2004, at 10 a.m., to conduct an oversight hearing on the semi-annual monetary policy report of the Federal Reserve.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GRASSLEY. 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 Thursday, February 12 at 10 a.m. to consider the President's fiscal year 2005 budget for the Department of the Interior.

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

COMMITTEE ON FINANCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Thursday, February 12, 2004, at 2 p.m., in 215 Dirksen Senate Office Building, to hear testimony concerning the Revenue Proposals in the President's fiscal year 2005 Budget.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 12, 2004 at 9:30 a.m. to hold a hearing on the State Department: Policy/Programs.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 12, 2004 at 2:30 p.m. to hold a hearing on Trade and Human Rights U.S./Vietnam.

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

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, February 12, 2004, at 9:30 a.m. in Dirksen Senate Building Room 226.

Agenda

I. Nominations

William James Haynes II to be U.S. Circuit Judge for the Fourth Circuit, Raymond W. Gruender to be U.S. Circuit Judge for the Eighth Circuit, Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit, Judith C. Herrera to be United States District Judge for the District of New Mexico, F. Dennis Saylor to be United States District Judge for the District of Massachusetts, Sandra L. Townes to be United States District Judge for the Eastern District of New York, Louis Guirola, Jr. to be United States District Judge for the Southern District of Mississippi, Virginia E. Hopkins to be United States District Judge for the Northern District of Alabama, Kenneth M. Karas to be United States District Judge for the Southern District of New York, Michele M. Leonhart to be Deputy Administrator of Drug Enforcement, and Domingo S. Herraiz to be Director of the Bureau of Justice Assistance, United States Department of Justice.

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

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate for a hearing entitled, ''The President's FY2005 Budget Request for the SBA'' on Thursday, February 12, 2004, beginning at 9:30 a.m. in room 428A of the Russell Senate Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 12, 2004 at 2:30 p.m. to hold a closed Business Meeting.

The PRESIDING OFFICER. Without objection it is so ordered.

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Immigration, Border Security and Citizenship be authorized to meet to conduct a hearing on ''Evaluating a Temporary Guest Worker Proposal'' on Thursday, February 12, 2004 at 2:30 p.m. in Dirksen 226.

Witness List

Panel I: The Honorable Asa Hutchinson, Undersecretary for Border and Transportation Security Directorate, Department of Homeland Security, Washington, DC; The Honorable Eduardo Aguirre, Director, U.S. Citizenship and Immigration Services, Department of Homeland Security, Washington, DC; The Honorable Steven J. Law, Deputy Secretary, Department of Labor, Washington, DC.

Panel II: Albert C. Zapanta, President, U.S.-Mexico Chamber of Commerce, Washington, DC; Richard R. Birkman, President, Texas Roofing Company, Austin, TX; Dr. Vernon Briggs, Professor of Industrial and Labor Relations, Cornell University, Ithaca, NY; Demetrios Papademetriou, Co-director, Migration Policy Institute, Washington, DC.

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, February 12 at 2:30 p.m.

The purpose of the hearing is to receive testimony on S. 1421, to authorize the subdivision and dedication of restricted land owned by Alaska natives; S. 1466, to facilitate the transfer of land in the state of Alaska, and for other purposes; S. 1649, to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes; and S. 1910, to direct the Secretary of Agriculture to carry out an inventory and management program for forests derived from public domain land.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Thursday, February 12, 2004, at 9:30 a.m., for a hearing entitled ''DOD Contractors Who Cheat on Their Taxes and What Should be Done About It.''

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

UNANIMOUS CONSENT REQUEST—S. 2061

Mr. FRIST. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the consideration of Calendar No. 429, S. 2061, the OB/GYN medical malpractice bill.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. I object.

The PRESIDING OFFICER. Objection is heard.

HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT OF 2003—MOTION TO PROCEED

CLOTURE MOTION

Mr. FRIST. Mr. President, with that objection, I now move to proceed to the consideration of S. 2061, the OB/GYN medical malpractice bill, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 429, S. 2061, a bill to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

Bill Frist, Judd Gregg, Kay Bailey Hutchison, Lisa Murkowski, Susan Collins, Elizabeth Dole, Michael B. Enzi, James Inhofe, John Ensign, Craig Thomas, John Cornyn, Pat Roberts, Sam Brownback, Orrin Hatch, Chuck Grassley, Mitch McConnell, Jon Kyl.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum under rule XXII be waived, and I ask unanimous consent that this vote occur at 5 p.m. on Tuesday, February 24.

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

PENSION FUNDING EQUITY ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate resume consideration of H.R. 3108, the pensions bill, and that the Senate insist upon its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on behalf of the Senate at a ratio of 3 to 2.

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

The PRESIDING OFFICER (Mr. CHAMBLISS) appointed Mr. GRASSLEY, Mr. GREGG, Mr. MCCONNELL, Mr. BAUCUS, and Mr. KENNEDY conferees on the part of the Senate.

WASHINGTON'S FAREWELL ADDRESS

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the resolution of the Senate of January 24, 1901, on Monday, February 23, 2004, immediately following the prayer, the Pledge of Allegiance to the flag, and disposition of the Journal, the traditional reading of Washington's Farewell Address take place.

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

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the order of the Senate on January 24, 1901, as modified by the order of February 12, 2004, appoints the Senator from Louisiana, Mr. BREAUX, to read Washington's Farewell Address on Monday, February 23, 2004.

The Chair, on behalf of the Democratic Leader, after consultation with the members of the Committee on Health, Education, Labor, and Pensions, and the Committee on Aging, pursuant to Public Law 100–175, as amended by Public Laws 102–375, 103–171, and 106–501, appoints the following individuals as members of the Policy Committee to the White House Conference on Aging:

The Senator from Iowa (Mr. HARKIN) and the Senator from Nevada (Mr. REID).

EXECUTIVE SESSION

NOMINATION OF SAMUEL W. BODMAN TO BE DEPUTY SECRETARY OF THE TREASURY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the nomination of Samuel W. Bodman to be Deputy Secretary of the Treasury, which was reported by the Finance Committee today. 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. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF TREASURY

Samuel W. Bodman, of Massachusetts, to be Deputy Secretary of the Treasury.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

COMMENDING THE CARROLL COLLEGE FIGHTING SAINTS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 303, submitted by Senators BURNS and BAUCUS earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant journal clerk read as follows:

A resolution (S. Res. 303) commending the Carroll College Fighting Saints football team for winning the 2003 National Association of Intercollegiate Athletics (NAIA) national football championship game.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BAUCUS. Mr. President, I rise today to honor the Carroll College Fighting Saints and to congratulate them on their second consecutive NAIA National Championship.

The Fighting Saints won their second straight NAIA National Championship by defeating Northwestern Oklahoma State University Rangers. And what was the score? 41 to 28.

We were very worried what kind of game this was going to be, and I was just elated when we broke the game open early and just kept the feet to the fire of the other team and we won by a large margin.

Mr. NICKLES. Will the Senator yield?

Mr. BAUCUS. To the Senator from Oklahoma, I am sure this is a very sensitive topic for him and I would be glad to yield to the Senator.

Mr. NICKLES. We have been in mourning over the terrible upset at the hands of—is it the Montana Rangers?

Mr. BAUCUS. Saints.

Mr. NICKLES. Montana Saints. Is that an acronym?

Mr. BAUCUS. Saints generally prevail.

Mr. NICKLES. Mr. President, I did not usually put Montana and saints in the same sentence, but I understand the Montana Saints prevailed and I wish to congratulate the Senator from Montana.

Mr. BAUCUS. I appreciate that. It is the Carroll College Fighting Saints. I might say the University of Montana has won AA national championships a couple of times in the last several years, too. We love football in Montana. I think—I know as much as people in Oklahoma love football, with the Sooners and the great history Oklahoma has had in football.

I might say, too, although the game was magical—it is always magical when you win—magic really did not play a large part in the Fighting Saints' victory. It was just good old-fashioned hard work and teamwork. Coach Van Diest is one very special guy, a Montanan, a real basic down-to-Earth guy who inspires such teamwork, just working together, hard work, making sure nobody takes credit for anything. This is a team game. We all work together to get this done.

When you meet the coach and see the team practice with him, it is very apparent. They are very humble. That is why we were very worried about this

game with Oklahoma. We don't take anything for granted. I am so proud of the team.

It is hard work on the football field. It is hard work in the weight room. It is hard work in the classroom. These are great guys, led by a group of very honorable young men through a solid season and an incredible string of 12 playoff games. Mike was one of five coaches to receive the American Football Coaches Association Coach of the Year award, one of five in the Nation, because he is such an inspirational, hard-working, no-nonsense, wonderful guy, representing the high caliber of the team and of Carroll College. We are extremely proud.

I might say, too, I am proud because this is my hometown. The Saints are from a college in Helena, MT. I thank the Saints, thank Coach Van Diest, thank them all for their hard work.

We may give Oklahoma a few points the next time we play them. We wish them well, too.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The resolution (S. Res. 303) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 303

Whereas the Carroll College Fighting Saints football team won the 2003 NAIA national championship game and its second straight national championship by defeating the Northwestern Oklahoma State University Rangers by a score of 41 to 28 at the Jim Carroll Stadium in Savannah, Tennessee, on December 20, 2003;

Whereas the Fighting Saints won 15 straight games, going undefeated in the 2003 regular season to win the Frontier Conference Championship and progressing through 4 rounds of playoffs;

Whereas head coach Mike Van Diest led the Fighting Saints to their second straight championship in his fifth season as head coach and was 1 of 5 coaches to receive the American Football Coaches Association Coach of the Year award;

Whereas Fighting Saints quarterback Tyler Emmert was named NAIA Player of the Year and offensive MVP for the championship game;

Whereas wide receiver Mark Gallik was named NAIA Football.net Offensive Player of the Year;

Whereas both Emmert and Gallik were named to the NAIA First Team All-American;

Whereas 2 players were named to the NAIA Second Team All-American—Spencer Schmitz and Marcus Atkinson—and 4 players received NAIA Honorable Mention All-American honors—Regan Mack, Rhett Crites, Nate Chiovaro, and Brett Bermingham;

Whereas 7 Fighting Saints were named as NAIA All-America Scholar Athletes—Kyle Baker, D.J. Dearcorn, Tyler Emmert, Kevin McCutcheon, Matt Peterson, A.J. Porrini, and Zach Zawacki; and

Whereas the Carroll College community, including the Carroll College Athletic Department, students, administration, board of trustees, faculty, and alumni, the city of Helena, and the entire State of Montana, are to be congratulated for their continuous support of the Carroll College football team: Now, therefore, be it

Resolved, That the Senate—

(1) commends the Carroll College Fighting Saints football team for winning the 2003 NAIA national championship;

(2) recognizes the achievements of all the players, coaches, support staff, and fans who were instrumental in helping Carroll College during the 2003 season; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to the president of Carroll College.

POVERTY REDUCTION AND PREVENTION ACT

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 414, S. 1786.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant journal clerk read as follows:

A bill (S. 1786) to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1786

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 ''Poverty Reduction and Prevention Act''.

[(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

[TITLE I—COMMUNITY SERVICES BLOCK GRANT ACT

[SEC. 101. PURPOSES.

[Section 672 of the Community Services Block Grant Act (42 U.S.C. 9901) is amended to read as follows:

["SEC. 672. PURPOSES.

[''The purpose of this subtitle is to reduce poverty—

[''(1) by strengthening and coordinating local efforts to expand opportunities for individuals and families to become economically self-sufficient and to improve and revitalize the communities in which low-income Americans live, by providing resources to States for support of local eligible entities and their partners to—

[''(A) plan, coordinate, and mobilize a broad range of Federal, State, local, and private assistance or investment in such a manner as to use these resources effectively to reduce poverty and in initiatives that are responsive to specific local needs and conditions;

[''(B) organize multiple services that meet the needs of low-income families and individuals, especially low-wage workers and their families, and that assist them in developing the assets and skills needed to become self sustaining while ensuring that these services are provided efficiently, in appropriate combinations, and in effective sequence; and

[''(C) design and implement comprehensive approaches to assist individuals transitioning from the Temporary Assistance to Needy Families Program to work;

[''(2) by improving and revitalizing the communities in which low-income Americans live by providing resources to—

[''(A) broaden the financial resource base of initiatives and projects directed to the elimination of poverty and the re-development of the low-income community, including partnerships with non-governmental and governmental institutions to develop the community assets and services that reduce poverty, such as—

[''(i) other private, charitable, neighborhood-based, and religious organizations;

[''(ii) individual citizens, and businesses, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor; and

[''(iii) local government leadership; and

[''(B) coordinate or create community-wide assets and services that will have a significant, measurable impact on the causes of poverty in the community and that will help families and individuals to achieve economic self-sufficiency, and test innovative, community-based approaches to attacking the causes and effects of poverty and of community breakdown, including—

[''(i) innovative initiatives to prevent and reverse loss of investment, jobs, public services, and infrastructure in low- and moderate-income communities; and

[''(ii) innovative partnerships to develop the assets and services that reduce poverty, as provided for in subparagraph (A); and

[''(3) by ensuring maximum participation of residents of low-income communities and of members of the groups served by programs under this subtitle in guiding the eligible entities and in their programs funded under this subtitle to ameliorate the particular problems and needs of low-income residents of their communities and to develop the permanent social and economic assets of the low-income community in order to reduce the incidence of poverty.''.

[SEC. 102. DEFINITIONS.

[Section 673 of the Community Services Block Grant Act (42 U.S.C. 9902) is amended—

[(1) in paragraph (1)(A)(ii), by striking ''or other mechanism''; and

[(2) in paragraph (2)—

[(A) in the first sentence—

[(i) by striking ''Office of Management and Budget'' and inserting ''Department of Health and Human Services''; and

[(ii) by inserting before the period the following: ''and increased, as the Secretary determines appropriate, to take into account higher costs-of-living for a State''; and

[(B) by striking the last sentence and inserting the following: ''Whenever a State determines that is has served the objectives of the block grant program established under this subtitle, the State may revise the poverty line, while placing a priority in serving those who are most in need, so that 125 percent of the official poverty line is the minimum level that a State shall be permitted to set as its maximum eligibility requirement and 60 percent of the State's median income is the maximum level that a State shall be permitted to set as its maximum eligibility requirement. The State may revise the poverty line only upon a determination that eligible entities are providing, coordinating, or partnering with means-tested support services for low and moderate-income individuals and families above the official poverty line. Nothing in this paragraph shall be construed to prevent eligible entities from continuing to support individuals and families during their transition from program eligibility to achieve specific goals for their economic security and long-term self-sufficiency as long as priority is given to serving the lowest income individuals who seek services.''.

[SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

[Section 674 of the Community Services Block Grant Act (42 U.S.C. 9903) is amended—

[(1) in subsection (a), by striking ''1999 through 2003'' and inserting ''2004 through 2009''; and

[(2) in subsection (b)(2)—

[(A) in subparagraph (A), by striking ''or associations'' and inserting ''and associations''; and

[(B) in subparagraph (B)—

[(i) by striking ''½ of the remainder'' and inserting ''not less than ½ of the remainder''; and

[(ii) by striking ''evaluation and'' and inserting ''evaluation and training and technical assistance activities and''.

[SEC. 104. ESTABLISHMENT OF PROGRAM.

[Section 675 of the Community Services Block Grant Act (42 U.S.C. 9904) is amended by striking ''through the program'' and all that follows through the period and inserting ''to States for the purpose of ameliorating the causes of poverty and the conditions caused by poverty in their communities.''.

[SEC. 105. USE OF FUNDS.

[Section 675C(b) of the Community Services Block Grant Act (42 U.S.C. 9907) is amended—

[(1) in paragraph (1)—

[(A) in subparagraph (A), by striking ''entities in need of such training and assistance'' and inserting ''eligible entities and their statewide associations that strengthens their managerial or programmatic capabilities to reduce poverty''; and

[(B) by striking subparagraphs (B) through (H), and inserting the following:

[''(B) supporting statewide coordination and communication among eligible entities and State-operated or supported programs and services, and other locally-operated programs and services targeted to low-income individuals and their children and families, so as to ensure that local eligible entities' services are integrated in a manner that allows such low-income individual and their families to have access to as many sources of assistance as are appropriate to support their progress to economic stability and self-sufficiency;

[''(C) supporting innovative partnerships, programs, and activities conducted by community action agencies and their partners including other community-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization, including asset-building programs for low-income individuals, such as programs supporting individual development accounts, and home or business ownership;

[''(D) analyzing the distribution of funds made available under this subtitle within the State to determine if such funds have been targeted to the areas of greatest need;

[''(E) supporting State charity tax credits as described in subsection (c);

[''(F) supporting the identification of exemplary grantee agencies or programs as Centers of Innovation and methodology for disseminating innovative programs and other best practices from those agencies statewide;

[''(G) supporting the development of eligible entities' partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners; and

[''(H) supporting other activities, consistent with the purposes of this subtitle.'';

[(2) in paragraph (2), by adding at the end the following: ''. The State shall also ensure that all funds distributed under subsection (a) are not used for excessive administrative expenses and that all funds distributed under such subsection used for salaries by a local entity are fair and equitable. The State has the authority to determine the appropriate level of funds distributed under subsection (a) that an eligible entity shall use for administrative expenses.''.

[SEC. 106. APPLICATION AND PLAN.

[Section 676 of the Community Services Block Grant Act (42 U.S.C. 9908) is amended—

[(1) in subsection (b)—

[(A) in the matter preceding paragraph (1), by inserting ''for the Secretary's approval'' after ''to the Secretary'';

[(B) by striking paragraphs (1) through (6) and inserting the following:

[''(1) an assurance that funds made available through the grant or allotment will be used—

[''(A) to support activities directly and through eligible entities that are designed to expand opportunities for and assist low-income individuals and their families (including low-income workers) to become self-sufficient, including low-income workers, families, and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals—

[''(i) to remove obstacles and solve problems that block the achievement of self-sufficiency by organizing and coordinating support for those served under paragraph (3);

[''(ii) to secure and retain employment that provides adequate income with essential benefits;

[''(iii) to attain an adequate education, with particular attention toward improving literacy and communications and technical skills of the low-income families in the communities involved;

[''(iv) to make better use of available income and build household assets;

[''(v) to obtain and maintain adequate housing and a suitable living environment;

[''(vi) to obtain assistance that is needed to resolve family emergencies and individual needs, to prevent further hardships, and to secure economic independence; and

[''(vii) to participate fully in the public affairs and management of their communities and the governance of eligible entities; and

[''(B) to make more effective use of, and to coordinate with, other programs related to the purposes of this subtitle (including State welfare reform efforts);

[''(2) a description of how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 675C(b) in accordance with this subtitle, including a description of how the State will support innovative community-based initiatives of eligible entities and their partners related to the purposes of this subtitle;

[''(3) an assurance that the State has integrated programs of general relevance in its plan, to the extent appropriate to the needs of low-income communities served by the eligible entities, including a description of innovative community and neighborhood-based initiatives such as—

[''(A) initiatives with the goal of strengthening families and encouraging effective parenting, including fatherhood initiatives;

[''(B) initiatives to assist those moving from welfare to work to obtain jobs at decent wages with benefits, including those low-income individuals and their families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act;

[''(C) programs for the establishment of violence-free zones that would involve youth development and intervention models that promote youth success (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs);

[''(D) family literacy initiatives;

[''(E) initiatives to increase the development of household assets of individuals such as individual development accounts and homeownership opportunities;

[''(F) public and private partnerships to foster community development, affordable housing, job creation, and other means of building the assets of low-income communities;

[''(G) partnerships with local law enforcement agencies, which may include participation in community policing, and activities to assist community residents and public safety officials in the event of emergencies, including threats to national security;

[''(H) initiatives to improve economic conditions and mobilize new resources in rural areas and other at-risk areas to eliminate obstacles to the self sufficiency of families and individuals in those communities;

[''(I) initiatives to help reduce the concentration of poverty in cities and inner suburbs and provide economic opportunities for individuals and families in those areas; and

[''(J) partnerships with nonprofit or community-based organizations that demonstrate effectiveness in child abuse prevention, including with programs that are school-based and that focus on adolescent victims, and victimizers;

[''(4) an assurance that the State will provide information, including—

[''(A) a description of the State measurement system and results for the performance goals established under section 678E(a)(1)(C);

[''(B) a description of the service delivery system, for services provided or coordinated with funds made available through grants made under section 675C(a), targeted to low-income individuals and families in communities within the State;

[''(C) a description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and followup consultations, and to support mobilization of new resources and partnerships;

[''(D) a description of how funds made available through grants made under section 675C(a) will be coordinated with other public and private resources; and

[''(E) a description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives related to the purposes of this subtitle;

[''(5) an assurance that eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals;

[''(6) an assurance that the State has, to avoid duplication of such services, and to ensure that program gaps are addressed, identified and coordinated with eligible entity programs, with State and local agencies, and with programs that assist low-income individuals and their families, including—

[''(A) programs carried out under part A of title IV of the Social Security Act, the Workforce Investment Act, and other programs designed to coordinate work-related supportive services for families;

[''(B) programs for expanding housing opportunities, reducing homelessness, and developing community investment projects;

[''(C) education programs, including those for preschool and school-aged children and for adults to obtain an adequate education; and

[''(D) programs designed to support youth, the homeless, migrants, senior citizens, and individuals with disabilities, including programs under the Low-Income Home Energy Assistance Act of 1981;'';

[(C) in paragraph (12), by striking ''not later than fiscal year 2001'' and inserting ''annually'';

[(D) in paragraph (13), by striking the period and inserting ''in sufficient detail to permit verification; and'';

[(E) by adding at the end the following:

[''(14) beginning with fiscal year 2006, and in each fiscal year thereafter, an assurance that the State is using the procedures described in section 678B(b) to monitor eligible entities.''; and

[(2) by striking subsection (f).

[SEC. 107. DESIGNATION OF ELIGIBLE ENTITIES IN UNDERSERVED AREAS.

[Section 676A(b) of the Community Services Block Grant Act (42 U.S.C. 9909(b)) is amended by adding at the end the following: ''In granting such designation, the State shall deem private nonprofit eligible entities that are providing related services in the unserved area to be of demonstrated effectiveness, consistent with the needs identified by a community needs assessment.''.

[SEC. 108. TRIPARTITE BOARDS.

[Section 676B(b) of the Community Services Block Grant Act (42 U.S.C. 9910(b)) is amended—

[(1) by striking ''through—'' and all that follows through ''a tripartite'' in paragraph (1) and inserting ''through a tripartite'';

[(2) by striking paragraph (2);

[(3) in subparagraph (C), by striking ''; or'' and inserting a period; and

[(4) by redesignating subparagraphs (A) through (C) as paragraph (1) through (3), respectively and realigning the margins of such paragraphs accordingly.

[SEC. 109. TRAINING, TECHNICAL ASSISTANCE, AND OTHER ACTIVITIES.

[Section 678A of the Community Services Block Grant Act (42 U.S.C. 9913) is amended—

[(1) in subsection (a)(1)—

[(A) in subparagraph (A), by striking ''corrective action'' and all that follows through ''; and'' and inserting ''monitoring and such additional corrective actions as may be needed to strengthen the management and programmatic practices of eligible entities;'';

[(B) by striking subparagraph (B) and inserting the following:

[''(B) for State and local performance reporting and program data collection activities related to programs carried out under this subtitle;

[''(C) for the preparation of reports provided for in section 678F;

[''(D) for the development and promulgation of a common State Financial and Organizational Protocol that is required to be used by States under section 678B(b); and

[''(E) to distribute amounts in accordance with subsection (c).'';

[(2) in subsection (b)(2), by striking ''an ongoing procedure for obtaining input from the national and State networks of eligible entities'' and inserting ''a strategic plan for annual technical assistance developed in consultation with the national and State networks of eligible entities regarding their management support needs''; and

[(3) in subsection (c)(1), by striking ''management information'' and all that follows through the period, and inserting ''improving management information and reporting systems, measuring of program results, ensuring responsiveness to identified local needs, and reporting and disseminating successful practices and initiatives''.

[SEC. 110. MONITORING.

[Section 678B of the Community Services Block Grant Act (42 U.S.C. 9914) is amended—

[(1) in the section heading by striking ''**OF ELIGIBLE ENTITIES**'';

[(2) in subsection (a)—

[(A) by striking the subsection heading and inserting ''MONITORING OF ELIGIBLE ENTITIES'';

[(B) in paragraph (1)—

[(i) by inserting ''biennial'' after ''onsite''; and

[(ii) by striking ''at least once during each 3 year period'';

[(C) by striking paragraph (2);

[(D) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

[(E) in paragraph (2) (as so redesignated), by inserting ''annual'' after ''Follow-up'';

[(3) by redesignating subsections (b) and (c) as subsection (c) and (d), respectively;

[(4) by inserting after subsection (a) the following:

[''(b) FINANCIAL AND ORGANIZATIONAL ASSESSMENT PROTOCOL.—Beginning in fiscal year 2006, States shall implement a financial and organizational assessment protocol to monitor and evaluate the compliance of eligible entities with the financial and administrative requirements of this section. Such protocol shall incorporate the fiscal and organizational review procedures and standards appropriate to the management of Federal funds under this subtitle and the governance of the eligible private non-profit corporations or other eligible entities. The Secretary shall require the protocol to be developed jointly by the States and eligible entities and shall assist States in developing appropriate training for personnel monitoring the uses of funds under this subtitle according to the requirements of this section.''; and

[(5) in subsection (d), as so redesignated, strike the last sentence and insert the following: ''The Secretary shall annually submit a report including the results of the evaluations conducted under this subtitle, the State performance reports provided for pursuant to section 678E(a)(1)(C), and other material as provided by section 678E(b)(2) to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.''.

[SEC. 111. CORRECTIVE ACTION; TERMINATION AND REDUCTION OF FUNDING.

[Section 678C of the Community Services Block Grant Act (42 U.S.C. 9915) is amended—

[(1) in subsection (a)—

[(A) in paragraph (4), by striking ''and'' at the end; and

[(B) by striking paragraph (5) and inserting the following:

[''(5) if the eligible entity fails to correct the deficiency, notify the entity—

[''(A) that the State intends to initiate proceedings to terminate the designation of the entity as an eligible entity or to reduce, from the previous year, the proportion of the total funding received by the State under this subtitle that is allocated to the eligible entity;

[''(B) that the eligible entity has the right to a hearing on the record to determine if there is cause for such termination or reduction in funding, as defined in section 676(c), and that the request for a hearing must be made in writing to the State within 30 days of receipt of the notice from the State; and

[''(C) of the legal basis for the proposed termination or reduction in funding, the factual findings on which the proposed termination or reduction in funding is based or a reference to specific findings in another document that form the basis for the proposed termination or reduction in funding (such as a reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, agreements, regulations, or State plan; and

[''(6) if the eligible entity requests a hearing, conduct a hearing on the record to determine if there is cause for termination or a reduction in funding, as defined in section 676(c).'';

[(2) in subsection (b)—

[(A) by striking ''review such a determination'' and inserting ''review and either approve, or disapprove and reverse, such a determination'';

[(B) by striking ''90 days'' each place that such appears and inserting ''30 days''; and

[(C) by striking ''90th day'' and inserting ''30th day''; and

[(3) in subsection (c), by adding at the end the following: ''The Secretary shall continue to fund an eligible entity, in an amount equal to the same proportion of total funds received by the State under this subtitle as was allocated to the eligible entity the previous year, until the Secretary approves, or disapproves and reverses, the determination of termination or reduction in funding with respect to the State.''.

[SEC. 112. FISCAL CONTROLS, AUDITS, AND WITHHOLDING.

[Section 678D of the Community Services Block Grant Act (42 U.S.C. 9916) is amended—

[(1) in subsection (a)(1)—

[(A) in subparagraph (C), by striking ''and'' at the end;

[(B) by redesignating subparagraph (D) as subparagraph (F); and

[(C) by inserting after subparagraph (C), the following:

[''(D) notwithstanding paragraph (2)(B), beginning in fiscal year 2005, and not less than every 2 years thereafter, each State shall submit to the Secretary a separate audit of the funds appropriated under this subtitle that meets the standards in paragraph (2)(A); and

[''(E) submit full financial reports to the Secretary not later than 6 months following the end of each fiscal year; and''; and

[(2) in subsection (b)(1), by adding at the end the following: ''The Secretary, after providing adequate notice, shall withhold administrative funds described in section 675C(b)(2) from any State that fails to comply with the provisions of sections 678A through 678D(a), and may, after an opportunity for a hearing conducted within the affected State, withhold funds from the State and provide such funds directly to the eligible entities in such State upon a demonstration of the compliance by such entities with the requirements of this subtitle.''

[SEC. 113. ACCOUNTABILITY AND REPORTING REQUIREMENT.

[Section 678E of the Community Services Block Grant Act (42 U.S.C. 9917) is amended to read as follows:

[''SEC. 678E. ACCOUNTABILITY AND REPORTING REQUIREMENTS.

[''(a) STATE ACCOUNTABILITY AND REPORTING REQUIREMENTS.—

[''(1) PERFORMANCE MEASUREMENT OF ELIGIBLE ENTITIES.—

[''(A) IN GENERAL.—Each State that receives funds under this subtitle shall participate, and shall ensure that all eligible entities in the State participate, in a performance measurement system, which may be a performance measurement system for which the Secretary facilitated development pursuant to subsection (b), or an alternative system that the Secretary is satisfied meets the requirements of subsection (b).

[''(B) LOCAL AGENCIES.—The State may elect to have local agencies that are subcontractors of the eligible entities under this subtitle participate in the performance measurement system. If the State makes that election, references in this section to eligible entities shall be considered to include the local agencies.

[''(C) PERFORMANCE MEASUREMENT OF STATES.—Not later than 1 year after the date of enactment of the Poverty Reduction and Prevention Act, the Secretary shall establish, in consultation with States and eligible entities, performance standards for the State administration of block grant funds. Such standards shall include standards relating to—

[''(i) the timeliness of the availability of State plans for public comment as required under section 676(a)(2)(B) and of submission of such plans to the Secretary as required in section 676(b);

[''(ii) the utilization of the financial and organizational assessment protocol established under section 678B(b), including the training and skills of State personnel responsible for such oversight, the completion of annual monitoring, the identification of opportunities for improvement, and the implementation of plans to enhance the management capacity and infrastructure of eligible entities;

[''(iii) the timeliness of the distribution of block grants funds to eligible entities as provided in section 675C(a);

[''(iv) the resources made available for management development at eligible entities, including monitoring, training, and assistance with financial management and program information and assessment systems;

[''(v) the results of State efforts to coordinate eligible entity programs with other State programs for low-income individuals and their families, especially participants in the Temporary Assistance for Needy Families Program and other working families, and to ensure the participation of eligible entities in the development of statewide strategies to reduce poverty; and

[''(vi) the assistance provided to eligible entities in securing private partnerships as required in section 676(b).

[''(2) ANNUAL REPORT.—Each State shall annually prepare and submit to the Secretary a report on the measured performance of the State and the eligible entities in the State. The State shall include in the report any information collected by the State relating to such performance. Each State shall also include in the report an accounting of the expenditure of funds received by the State through the community services block grant program, including an accounting of funds spent on administrative costs by the State and the eligible entities, funds spent by eligible entities on the direct delivery of local services, and the achievement of national goals established under the procedures described in this section, and shall include information on the number of and characteristics of clients served under this subtitle in the State, based on data collected from the eligible entities. The State shall also include in the report a summary describing the training and technical assistance offered by the State under section 678C(a)(3) during the year covered by the report.

[''(b) LOCAL ENTITY ACCOUNTABILITY AND REPORTING REQUIREMENTS.—

[''(1) LOCAL ENTITY DETERMINED GOALS.—In order to be designated as an eligible entity and to receive a grant under this subtitle, a grantee shall establish grantee determined goals for reducing poverty in the community, including goals for—

[''(A) leveraging community resources;

[''(B) fostering coordination of Federal, State, local, private, and other assistance; and

[''(C) promoting community involvement.

[''(2) DEMONSTRATION THAT GOALS WERE MET.—In order to receive a grant subsequent to the first grant that is provided to an eligible entity following the date of enactment of the Poverty Reduction and Prevention Act, the entity shall demonstrate to the State that substantial progress has been made in meeting the goals of the entity as described in paragraph (1).

[''(3) GOALS OR PERFORMANCE MEASURES.—Any specific goals or performance measures, for an individual eligible entity, that are used in any monitoring or review process under this subtitle, shall be—

[''(A) determined by the entity;

[''(B) agreed on by the State involved and the entity, during the planning process leading to the grant involved; and

[''(C) incorporated into the grant agreement between the State and entity for each subsequent award cycle.

[''(c) SECRETARY'S ACCOUNTABILITY AND REPORTING REQUIREMENTS.—

[''(1) FEDERAL PERFORMANCE MEASUREMENT.—The Secretary shall establish goals for the Department of Health and Human Services Office of Community Services with respect to—

[''(A) the timeliness of the distribution of funds under this subtitle, including funds for training and technical assistance;

[''(B) the monitoring of States as provided for in section 678D;

[''(C) the coordination of other Office of Community Service programs with the activities of States and eligible entities under this subtitle; and

[''(D) the full and timely reporting as required in this section.

[''(2) LOCAL PERFORMANCE MEASUREMENT.—

[''(A) IN GENERAL.—To the maximum extent practicable, the Secretary shall coordinate reporting requirements for all programs of the Department of Health and Human Services that are managed by eligible entities so as to consolidate and reduce the number of reports required relating to individuals, families, and uses of grant funds, specifically funds under the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, child care programs administered by the Department, and health related service programs administered by the Department.

[''(B) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance, including support for the enhancement of electronic data systems, to States and to eligible entities to enhance their capability to collect and report data for such a system and to aid in their participation in such a system.

[''(C) LOCAL ENTITY PERFORMANCE MEASUREMENT SYSTEM.—The Secretary shall assist in the implementation of a local entity performance measurement system, and other voluntary programmatic and results reporting systems, developed by States, eligible entities, and their national associations acting together. The Secretary and the developers of such systems shall ensure that the set of measures are numerous enough to cover the full range of services offered by all local eligible entities. Under such a system, local eligible entities shall only be compelled to collect data on the subset of performance measures that reflect their community-specific programs and services currently adopted. Grantees shall not be required under this subparagraph to alter the collection of data for any reports provided for other programs within the Department of Health and Human Services or other Federal agencies. States shall compile annual Results Oriented Management and Accountability System reports for the Secretary under this subparagraph.

[''(3) REPORTING REQUIREMENTS.—For each fiscal year the Secretary shall, directly or by grant or contract, prepare a report containing—

[''(A) a summary of the planned use of funds by each State, and the eligible entities in the State, under the community services block grant program, as contained in each State plan submitted pursuant to section 676;

[''(B) a description of how funds were actually spent by the State and eligible entities in the State, including a breakdown of funds spent on administrative costs and on the direct delivery of local programs by eligible entities;

[''(C) information on the number of entities eligible for funds under this subtitle, the number of low-income persons served under this subtitle, and such demographic data on the low-income populations served by eligible entities as is determined by the Secretary to be feasible;

[''(D) a comparison of the planned uses of funds for each State and the actual uses of the funds;

[''(E) a summary of each State's performance results, and the results for the eligible entities, as collected and submitted by the States in accordance with subsection (a)(2); and

[''(F) any additional information that the Secretary considers to be appropriate to carry out this subtitle, if the Secretary informs the States of the need for such additional information and allows a reasonable period of time for the States to collect and provide the information.

[''(4) SUBMISSION.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate

the report described in paragraph (2), and any comments the Secretary may have with respect to such report. The report shall include definitions of direct and administrative costs used by the Department of Health and Human Services for programs funded under this subtitle.

''(5) COSTS.—Of the funds reserved under section 674(b)(3), not more than $500,000 shall be available to carry out the reporting requirements contained in paragraph (3).''.

SEC. 114. LIMITATIONS ON USE OF FUNDS.

Section 678F(c)(1) of the Community Services Block Grant Act (42 U.S.C. 9918(c)(1)) is amended by inserting ''religion,'' after ''race,''.

SEC. 115. OPERATIONAL RULE.

Section 679(a) of the Community Services Block Grant Act (42 U.S.C. 9920(a)) is amended by inserting ''and such organization meets the requirements of this subtitle'' before the first period;

SEC. 116. DISCRETIONARY AUTHORITY OF THE SECRETARY.

Section 680 of the Community Services Block Grant Act (42 U.S.C. 9921) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) by redesignating subparagraphs (B) through (E) as subparagraph (D) through (G), respectively;

(ii) by striking subparagraph (A) and inserting the following:

''(A) ECONOMIC DEVELOPMENT ACTIVITIES.—The Secretary shall make grants described in paragraph (1) on a competitive basis to private, nonprofit organizations that are community development corporations to provide technical and financial assistance for economic development activities, including business, economic, and community development projects, designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities. Such assistance shall include—

''(i) long term loans (up to 15 years) or investments for private business enterprises;

''(ii) providing capital to businesses owned by community development corporations; and

''(iii) marketing and management assistance for businesses providing jobs and business opportunities to low income individuals.

''(B) FEDERAL INTEREST.—

''(i) IN GENERAL.—The Secretary shall establish procedures that permit a grantee who receives funds under a grant to carry out this paragraph, or intangible assets acquired with such funds, to become the sole owner of the funds or assets before the end of the 12-year period beginning at the end of the fiscal year for which the grant is made.

''(ii) CONDITIONS.—To be eligible to become the sole owner, the grantee shall agree—

''(I) to use the funds or assets for the purposes and uses for which the grant was made, or purposes and uses consistent with this subtitle, during and after the 12-year period described in clause (i), whether or not the grantee continues to be supported by Federal funds; and

''(II) that, when the grantee no longer needs the funds or assets for purposes and uses described in subclause (I), the grantee shall request instructions from the Secretary about the disposition of the funds or assets.

''(iii) ENCUMBERING.—The grantee may not encumber the assets without the approval of the Secretary.

''(C) ADMINISTRATIVE REQUIREMENTS.—In a case in which an eligible project under grant made under this section cannot, for good cause, be implemented, the Secretary shall establish a policy to permit the substitution of other eligible projects. Such policy shall require that such project have the same impact area, the same goals, and the same objectives as the original project and outcomes that are substantially the same as the original project.'';

(iii) in subparagraph (E) (as so redesignated), by striking ''community'' and inserting ''service area''; and

(iv) in subparagraph (G) (as so redesignated), by striking ''1 percent'' and inserting ''2 percent''; and

(B) in paragraph (3)(B), by striking ''community'' and inserting ''water and waste water''; and

(C) in paragraph (4), by striking ''individual and families'' and inserting ''individual and their families''; and

(2) in subsection (c), by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''.

SEC. 117. COMMUNITY FOOD AND NUTRITION PROGRAMS.

Section 681 of the Community Services Block Grant Act (42 U.S.C. 9922) is amended—

(1) in subsection (c), by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''; and

(2) in subsection (d), by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

SEC. 118. NATIONAL OR REGIONAL PROGRAMS DESIGNED TO PROVIDE INSTRUCTIONAL ACTIVITIES FOR LOW-INCOME YOUTH.

Section 682 of the Community Services Block Grant Act (42 U.S.C. 9923) is amended—

(1) in subsection (b)(2), by striking ''or treatment''; and

(2) in subsection (g), by striking ''$15,000,000 for each of fiscal years 1999 through 2003'' and inserting ''$18,000,000 for each of fiscal years 2004 through 2009''.

SEC. 119. SHORT TITLE AND CONFORMING AMENDMENTS.

(a) IN GENERAL.—Section 671 of the Community Services Block Grant Act (42 U.S.C. 9901 note) is amended by striking ''Community Services Block Grant Act'' and inserting ''Poverty Reduction and Prevention Act''.

(b) CONFORMING AMENDMENTS.—

(1) COMMUNITY SERVICES BLOCK GRANT ACT.—The heading for subtitle B of title VI of the Omnibus Budget Reconciliation Act of 1981 is amended to read as follows:

''Subtitle B—Poverty Reduction and Prevention Program''.

(2) OTHER PROVISIONS OF LAW.—The following provisions of law are each amended by striking ''Community Services Block Grant Act'' each place that such appears and inserting ''Poverty Reduction and Prevention Act'':

(A) Section 307(a)(3)(A) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927(a)(3)(A)).

(B) Section 5(c)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2014(c)(1)).

(C) Section 201A(7) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501(7)).

(D) Section 172(13) of the Program for Investment in Microentrepreneurs Act of 1999 (15 U.S.C. 6901(13)).

(E) Sections 201(b)(3), 435(o)(1)(A)(ii), and 435(o)(1)(B)(ii) of the Higher Education Act of 1965 (20 U.S.C. 1021(b)(3), 1085(o)(1)(A)(ii), and 1085(o)(1)(B)(ii)).

(F) Section 131(b)(2) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2351(b)(2)).

(G) Section 9109(33) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(33)).

(H) Section 231(a)(2) of the Museum and Library Services Act (20 U.S.C. 9141(a)(2)).

(I) Sections 101(36), 112(b)(8)(A)(vii), 121(b)(1)(B)(x), and 501(b)(2)(O) of the Workforce Investment Act of 1998 (29 U.S.C. 2801(36), 2822(b)(8)(A)(vii), and 2841(b)(1)(B)(x), and 20 U.S.C. 9271((b)(2)(O)).

(J) Section 303(9) of the Early Learning Opportunities Act (20 U.S.C. 9402(9)).

(K) Sections 6501(4)(B) and 6703(a)(2) of title 31, United States Code.

(L) Section 549(c)(3)(B)(ii) of title 40, United States Code.

(M) Section 317M(c)(3)(B)(ii) of the Public Health Service Act (42 U.S.C. 247b-14(c)(3)(B)(ii)).

(N) Section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

(O) Sections 102(38), 203(b)(13), 213, 306(a)(6)(C), and 503(b)(2) of the Older Americans Act of 1965 (42 U.S.C. 3002(38), 3013(b)(13), 3020d, 3026(a)(6)(C), and 3056a(b)(2)).

(P) Sections 103(a)(6), 105(b)(2)(A), 211(e)(1), and 421(6) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4953(a)(6), 4955(b)(2)(A), 5011(e)(1), and 5061(6)).

(Q) Sections 2603(8) and 2607B(e)(2)(B)(i) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8622(8) and 8626b(e)(2)(B)(i)).

(R) Sections 407(b)(2) and 408(a)(1)(C) of the Human Services Reauthorization of 1986 (42 U.S.C. 9812a(b)(2) and 9925(a)(1)(C)).

(S) Section 630(a) of the Community Economic Development Act of 1981 (42 U.S.C. 9819(a)).

(T) Sections 158(b) and 178(i)(1) of the National and Community Service Act of 1990 (42 U.S.C. 12618(b) and 12638(i)(1)).

(U) The 5th unnumbered paragraph (relating to poverty line) of section 30401 of the Community Schools Youth Services and Supervision Grant Program Act of 1994 (42 U.S.C. 13791).

TITLE II—LOW-INCOME HOME ENERGY ASSISTANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Low-Income Home Energy Assistance Amendments of 2003''.

SEC. 202. REAUTHORIZATION.

(a) IN GENERAL.—Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended in the first sentence by striking ''such sums'' and all that follows through the period and inserting ''and $3,400,000,000 for each of fiscal years 2004 through 2006, and such sums as may be necessary for each fiscal year thereafter.''.

(b) PROGRAM YEAR.—Section 2602(c) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(c)) is amended by inserting ''authorized'' after ''programs and activities''.

(c) INCENTIVE PROGRAM FOR LEVERAGING NON-FEDERAL RESOURCES.—Section 2602(d) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(d)) is amended—

(1) in paragraph (1), by striking ''1994 through 2004'' and inserting ''2004 through 2010''; and

(2) in paragraph (2), ''1994 through 2004'' and inserting ''2004 through 2010''.

SEC. 203. NATURAL DISASTERS AND OTHER EMERGENCIES.

Section 2604(e) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(e)) is amended by adding at the end the following flush sentences:

''Notwithstanding any other provision of this section, for purposes of making determinations under section 2603(1)(C), if the Secretary determines that there is an increase of at least 20 percent in the cost of home energy over the previous 5-year average for a duration of a month or more in one

or more States or regions, the Secretary shall declare an energy emergency in the affected area and shall make available funds as provided in this subsection. Notwithstanding any other provision of this section, for purposes of making such determinations, if the Secretary determines that the number of heating degree days or cooling days for a month was more than 100 above the 30-year average in one or more States or regions, the Secretary shall declare an energy emergency in the affected area and shall make available funds as provided in this subsection.''.

[SEC. 204. RESIDENTIAL ENERGY ASSISTANCE CHALLENGE OPTION.

[(a) EVALUATION.—The Comptroller General of the United States shall conduct an evaluation of the Residential Energy Assistance Challenge program described in section 2607B of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8626b).

[(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing—

[(1) the findings resulting from the evaluation described in subsection (a); and

[(2) the State evaluations described in paragraphs (1) and (2) of section 2607B(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8626b(b)).

[SEC. 205. REPORT TO CONGRESS.

[(a) STUDY.—

[(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study on the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.)

[(2) REQUIREMENTS.—In conducting the study under subparagraph (A), the Secretary of Health and Human Services shall—

[(A) evaluate the performance of the Low-Income Home Energy Assistance Program, including who the program is serving, the benefits of the program to recipients, and the ability of the program to reduce utility arrearage and shut-offs among low-income households;

[(B) develop a protocol for States to collect information from energy distribution companies, including electric, natural gas, heating oil, and propane companies, concerning the following residential customer statistics—

[(i) the number of accounts certified as eligible for energy assistance;

[(ii) the number of accounts certified as eligible for energy assistance and that are past due;

[(iii) the total revenue owed on accounts eligible for energy assistance and that are past due;

[(iv) the number of disconnection notices issued on accounts eligible for energy assistance;

[(v) the number of disconnections for nonpayment;

[(vi) the number of reconnections;

[(vii) the number of accounts eligible for energy assistance and determined uncollectible; and

[(viii) the energy burden of accounts eligible for energy assistance;

[(C) analyze the public health and safety threats of hypothermia and hyperthermia due to a lack of home heating or home cooling, including mortality, morbidity, and decrease in caloric intake;

[(D) analyze the affect of the standard of housing and housing age on energy costs to low-income households;

[(E) evaluate regional difference in cost-of-living and the ability of low-income families to meet home energy requirements; and

[(F) determine the programmatic impacts of using 60 percent of State median income to determine low-income households.

[(b) REPORT.—Not later than 24 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report containing the results of the study conducted under subsection (a).

[(c) DEFINITION.—In this section, the term ''State'' means each of the 50 States and the District of Columbia.

[(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each of fiscal year 2004 and 2005.

[(e) CONTRACTS.—Using amounts appropriated under subsection (d), the Secretary of Health and Human Services may enter into contracts or jointly financed cooperative agreements or interagency agreements with States and public agencies and private nonprofit organizations to conduct the study under subsection (a).

[TITLE III—ASSETS FOR INDEPENDENCE ACT

[SEC. 301. SHORT TITLE.

[This title may be cited as the ''Assets for Independence Reauthorization Act''.

[SEC. 302. REAUTHORIZATION OF THE ASSETS FOR INDEPENDENCE ACT.

[(a) DEFINITION OF QUALIFIED EXPENSES.—Section 404(8) of the Assets for Independence Act (42 U.S.C. 604 note) is amended—

[(1) in subparagraph (A)—

[(A) in the matter preceding clause (i), by inserting ''or to a vendor following approval by a qualified entity upon submission of an approved qualified education purchase plan'' before the period; and

[(B) by adding at the end the following:

[''(iii) QUALIFIED EDUCATION PURCHASE PLAN.—The term 'qualified education purchase plan' means a document that explains the education item to be purchased which—

[''(I) is approved by a qualified entity; and

[''(II) includes a description of the good to be purchased.'';

[(2) in subparagraph (D), by striking ''eligible''; and

[(3) by adding at the end the following:

[''(E) SAVING IN IDAS FOR DEPENDENTS.—Amounts paid to an individual development account established for the benefit of a dependent (as such terms is defined for purposes of subparagraph (D)(ii)) of an eligible individual for the purpose of post-secondary education.''.

[(b) REPEAL OF PROVISION.—Section 405 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking subsection (g).

[(c) RESERVE FUND.—Section 407 of the Assets for Independence Act (42 U.S.C. 604 note) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1)—

[(i) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

[(ii) by inserting before subparagraph (B) (as so redesignated) the following:

[''(A) all grant funds provided to the qualified entity from the Secretary for the purpose of the demonstration project as described under subsection (c)(1);'' and

[(B) by adding at the end the following:

[''(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1)(A) shall be construed to preclude a qualified entity from depositing other demonstration project funds into the Reserve Fund.''; and

[(2) in subsection (d), by inserting ''the date that is 12 months after'' after ''upon the''.

[(d) USE OF AMOUNTS.—Section 407(c) of the Assets for Independence Act (42 U.S.C. 604 note) is amended by adding at the end the following:

[''(4) USE OF NONFEDERAL FUNDS.—

[''(A) IN GENERAL.—Notwithstanding paragraph (3), not more than 20 percent of the amount of non-Federal funds committed to a project as matching contributions in accordance with the application submitted by the qualified entity under section 405(c)(4) shall be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).

[''(B) PRIORITY.—In awarding grants under section 406(b), the Secretary shall give priority to qualified entities that submit applications that, with respect to the commitment of non-Federal funds under section 5(c)(4), provide assurances that are not to exceed 15 percent of such non-Federal funds will be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).''.

[(e) ELIGIBILITY FOR PARTICIPATION.—Section 408(a)(1) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

[''(1) INCOME TEST.—The—

[''(A) gross income of the household is—

[''(i) equal to or less than 200 percent of the poverty line (as determined by the Office of Management and Budget);

[''(ii) the earned income amount described in section 32 of the Internal Revenue Code of 1986 (taking into account the size of the household); or

[''(iii) equal to or less than 80 percent of the Area Median Income (as determined by the Department of Housing and Urban Development); or

[''(B) the modified adjusted gross income of the household for the previous year does not exceed $18,000 for an individual filer, $30,000 for a head of household, or $38,000 for a joint filer.''.

[(f) DEPOSITS BY QUALIFIED ENTITIES.—Section 410 of the Assets for Independence Act (42 U.S.C. 604 note) is amended—

[(1) in subsection (a), by striking ''qualified entity—'' and all that follows through the end and inserting the following: ''qualified entity, a matching contribution of not less than $0.50 and not more than $4 for every $1 of earned income (as defined in section 911(d)(2) of Internal Revenue Code of 1986) deposited in the account and interest earned on that account by a project participant during that period. Matching contributions shall be made—

[''(1) from the non-Federal funds described in section 405(c)(4); and

[''(2) from the grant made under section 406(b);

''based on a ratio relating to the sources of funds described in paragraph (1) and (2) as determined by the qualified entity.'';

[(2) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

[(3) by inserting after subsection (a), the following:

[''(b) USE OF EXCESS INTEREST ON MATCHING FUNDS EARNED ON THE RESERVE FUND.—Interest that accrues on the matching funds earned and held in the Reserve Fund, over and above the interest required to match an individuals deposits and interest earned in the individual development account, shall be used by the qualified entity to fund existing individual development accounts or additional individual development accounts.''.

[(g) AUTHORIZATION OF APPROPRIATIONS.—Section 416 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking ''and 2003'' and inserting ''and 2003, $25,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008,''.

[(h) APPLICATION OF AMENDMENTS.—In administering the Assets for Independence Act

(42 U.S.C. 604 note), the Secretary of Health and Human Services may apply the amendments made by this section to individual account holders and entities that received grants under such Act either before or after the date of enactment of this Act.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Poverty Reduction and Prevention Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—COMMUNITY SERVICES BLOCK GRANT ACT

SEC. 101. PURPOSES.

Section 672 of the Community Services Block Grant Act (42 U.S.C. 9901) is amended to read as follows:

''SEC. 672. PURPOSES.

''The purpose of this subtitle is to reduce poverty—

''(1) by strengthening and coordinating local efforts to expand opportunities for individuals and families to become economically self-sufficient and to improve and revitalize the communities in which low-income Americans live, by providing resources to States for support of local eligible entities and their partners to—

''(A) plan, coordinate, and mobilize a broad range of Federal, State, local, and private assistance or investment in such a manner as to use these resources effectively to reduce poverty and in initiatives that are responsive to specific local needs and conditions;

''(B) organize multiple services that meet the needs of low-income families and individuals, especially low-wage workers and their families, and that assist them in developing the assets and skills needed to become self sustaining while ensuring that these services are provided efficiently, in appropriate combinations, and in effective sequence; and

''(C) design and implement comprehensive approaches to assist individuals transitioning from the program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) to work;

''(2) by improving and revitalizing the communities in which low-income Americans live by providing resources to—

''(A) broaden the financial resource base of initiatives and projects directed to the elimination of poverty and the re-development of the low-income community, including partnerships with non-governmental and governmental institutions to develop the community assets and services that reduce poverty, such as—

''(i) other private, charitable, neighborhood-based, and religious organizations;

''(ii) individual citizens, and businesses, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor; and

''(iii) local government leadership; and

''(B) coordinate or create community-wide assets and services that will have a significant, measurable impact on the causes of poverty in the community and that will help families and individuals to achieve economic self-sufficiency, and test innovative, community-based approaches to attacking the causes and effects of poverty and of community breakdown, including—

''(i) innovative initiatives to prevent and reverse loss of investment, jobs, public services, and infrastructure in low- and moderate-income communities; and

''(ii) innovative partnerships to develop the assets and services that reduce poverty, as provided for in subparagraph (A); and

''(3) by ensuring maximum participation of residents of low-income communities and of members of the groups served by programs under this subtitle in guiding the eligible entities and in their programs funded under this subtitle to ameliorate the particular problems and needs of low-income residents of their communities and to develop the permanent social and economic assets of the low-income community in order to reduce the incidence of poverty.''.

SEC. 102. DEFINITIONS.

Section 673 of the Community Services Block Grant Act (42 U.S.C. 9902) is amended—

(1) in paragraph (1)(A)(ii), by striking ''or other mechanism''; and

(2) in paragraph (2)—

(A) in the first sentence—

(i) by striking ''Office of Management and Budget'' and inserting ''Department of Health and Human Services''; and

(ii) by inserting before the period the following: ''and increased, as the Secretary determines appropriate, to take into account higher costs-of-living for a State''; and

(B) by striking the last sentence and inserting the following: ''Whenever a State determines that it has served the objectives of the block grant program established under this subtitle, the State may revise the poverty line, while placing a priority in serving those who are most in need, so that 125 percent of the official poverty line is the minimum level that a State shall be permitted to set as its maximum eligibility requirement and 60 percent of the State's median income is the maximum level that a State shall be permitted to set as its maximum eligibility requirement. The State may revise the poverty line only upon a determination that eligible entities are providing, coordinating, or partnering with means-tested support services for low and moderate-income individuals and families above the official poverty line. Nothing in this paragraph shall be construed to prevent eligible entities from continuing to support individuals and families during their transition from program eligibility to achieve specific goals for their economic security and long-term self-sufficiency as long as priority is given to serving the lowest income individuals who seek services.''.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

Section 674 of the Community Services Block Grant Act (42 U.S.C. 9903) is amended—

(1) in subsection (a), by striking ''1999 through 2003'' and inserting ''2004 through 2009''; and

(2) in subsection (b)(2)—

(A) in subparagraph (A), by striking ''or associations'' and inserting ''and associations''; and

(B) in subparagraph (B)—

(i) by striking ''½ of the remainder'' and inserting ''not less than ½ of the remainder''; and

(ii) by striking ''evaluation and'' and inserting ''evaluation and training and technical assistance activities and''.

SEC. 104. ESTABLISHMENT OF PROGRAM.

Section 675 of the Community Services Block Grant Act (42 U.S.C. 9904) is amended by striking ''through the program'' and all that follows through the period and inserting ''to States for the purpose of ameliorating the causes of poverty and the conditions caused by poverty in their communities.''.

SEC. 105. USE OF FUNDS.

Section 675C(b) of the Community Services Block Grant Act (42 U.S.C. 9907(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking ''entities in need of such training and assistance'' and inserting ''eligible entities and their statewide associations that strengthens their managerial or programmatic capabilities to reduce poverty''; and

(B) by striking subparagraphs (B) through (H) and inserting the following:

''(B) supporting statewide coordination and communication among eligible entities and State-operated or supported programs and services, and other locally-operated programs and services targeted to low-income individuals and their children and families, so as to ensure that local eligible entities' services are integrated in a manner that allows such low-income individual and their families to have access to as many sources of assistance as are appropriate to support their progress to economic stability and self-sufficiency;

''(C) supporting innovative partnerships, programs, and activities conducted by community action agencies and their partners including other community-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization, including asset-building programs for low-income individuals, such as programs supporting individual development accounts, and home or business ownership;

''(D) analyzing the distribution of funds made available under this subtitle within the State to determine if such funds have been targeted to the areas of greatest need;

''(E) supporting State charity tax credits as described in subsection (c);

''(F) supporting the identification of exemplary eligible entities or programs as Centers of Innovation and methodology for disseminating innovative programs and other best practices from those agencies statewide;

''(G) supporting the development of eligible entities' partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners; and

''(H) supporting other activities, consistent with the purposes of this subtitle.''; and

(2) in paragraph (2), by adding at the end the following: ''The State shall also ensure that all funds distributed under subsection (a) are not used for excessive administrative expenses and that all funds distributed under such subsection used for salaries by a local entity are fair and equitable. The State has the authority to determine the appropriate level of funds distributed under subsection (a) that an eligible entity shall use for administrative expenses.''.

SEC. 106. APPLICATION AND PLAN.

Section 676 of the Community Services Block Grant Act (42 U.S.C. 9908) is amended—

(1) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting ''for the Secretary's approval'' after ''to the Secretary'';

(B) by striking paragraphs (1) through (6) and inserting the following:

''(1) an assurance that funds made available through the grant or allotment will be used—

''(A) to support activities directly and through eligible entities that are designed to expand opportunities for and assist low-income individuals and their families (including low-income workers) to become self-sufficient, including low-income workers, families, and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals—

''(i) to remove obstacles and solve problems that block the achievement of self-sufficiency by organizing and coordinating support for those served under paragraph (3);

''(ii) to secure and retain employment that provides adequate income with essential benefits;

''(iii) to attain an adequate education, with particular attention toward improving literacy and communications and technical skills of the low-income families in the communities involved;

''(iv) to make better use of available income and build household assets;

''(v) to obtain and maintain adequate housing and a suitable living environment;

''(vi) to obtain assistance that is needed to resolve family emergencies and individual needs, to prevent further hardships, and to secure economic independence; and

''(vii) to participate fully in the public affairs and management of their communities and the governance of eligible entities; and

''(B) to make more effective use of, and to coordinate with, other programs related to the purposes of this subtitle (including State welfare reform efforts);

''(2) a description of how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 675C(b) in accordance with this subtitle, including a description of how the State will support innovative community-based initiatives of eligible entities and their partners related to the purposes of this subtitle;

''(3) an assurance that the State has integrated programs of general relevance in its plan, to the extent appropriate to the needs of low-income communities served by the eligible entities, including a description of innovative community and neighborhood-based initiatives such as—

''(A) initiatives with the goal of strengthening families and encouraging effective parenting, including fatherhood initiatives;

''(B) initiatives to assist those moving from welfare to work to obtain jobs at decent wages with benefits, including those low-income individuals and their families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

''(C) programs for the establishment of violence-free zones that would involve youth development and intervention models that promote youth success (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs);

''(D) family literacy initiatives;

''(E) initiatives to increase the development of household assets of individuals such as individual development accounts and homeownership opportunities;

''(F) public and private partnerships to foster community development, affordable housing, job creation, and other means of building the assets of low-income communities;

''(G) partnerships with local law enforcement agencies, which may include participation in community policing, and activities to assist community residents and public safety officials in the event of emergencies, including threats to national security;

''(H) initiatives to improve economic conditions and mobilize new resources in rural areas and other at-risk areas to eliminate obstacles to the self sufficiency of families and individuals in those communities;

''(I) initiatives to help reduce the concentration of poverty in cities and inner suburbs and provide economic opportunities for individuals and families in those areas; and

''(J) partnerships with nonprofit or community-based organizations that demonstrate effectiveness in child abuse prevention, including with programs that are school-based and that focus on adolescent victims, and victimizers;

''(4) an assurance that the State will provide information, including—

''(A) a description of the State measurement system and results for the performance goals established under section 678E(a)(1)(C);

''(B) a description of the service delivery system, for services provided or coordinated with funds made available through grants made under section 675C(a), targeted to low-income individuals and families in communities within the State;

''(C) a description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and followup consultations, and to support mobilization of new resources and partnerships;

''(D) a description of how funds made available through grants made under section 675C(a) will be coordinated with other public and private resources; and

''(E) a description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives related to the purposes of this subtitle;

''(5) an assurance that eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals;

''(6) an assurance that the State has, to avoid duplication of such services, and to ensure that program gaps are addressed, identified and coordinated with eligible entity programs, with State and local agencies, and with programs that assist low-income individuals and their families, including—

''(A) programs carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), and other programs designed to coordinate work-related supportive services for families;

''(B) programs for expanding housing opportunities, reducing homelessness, and developing community investment projects;

''(C) education programs, including those for preschool and school-aged children and for adults to obtain an adequate education; and

''(D) programs designed to support youth, the homeless, migrants, senior citizens, and individuals with disabilities, including programs under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.);'';

(C) in paragraph (12)—

(i) by striking ''not later than fiscal year 2001'' and inserting ''annually''; and

(ii) by striking ''and'' at the end;

(D) in paragraph (13), by striking the period and inserting ''in sufficient detail to permit verification; and''; and

(E) by adding at the end the following:

''(14) beginning with fiscal year 2006, and in each fiscal year thereafter, an assurance that the State is using the procedures described in section 678B(b) to monitor eligible entities.''; and

(2) by striking subsection (f).

SEC. 107. DESIGNATION OF ELIGIBLE ENTITIES IN UNDERSERVED AREAS.

Section 676A(b) of the Community Services Block Grant Act (42 U.S.C. 9909(b)) is amended by adding at the end the following: ''In granting such designation, the State shall deem private nonprofit eligible entities that are providing related services in the unserved area to be of demonstrated effectiveness, consistent with the needs identified by a community needs assessment.''.

SEC. 108. TRIPARTITE BOARDS.

Section 676B(b) of the Community Services Block Grant Act (42 U.S.C. 9910(b)) is amended—

(1) by striking ''through—'' and all that follows through ''a tripartite'' in paragraph (1) and inserting ''through a tripartite'';

(2) by striking paragraph (2);

(3) in subparagraph (C), by striking ''; or'' and inserting a period; and

(4) by redesignating subparagraphs (A) through (C) as paragraph (1) through (3), respectively and realigning the margins of such paragraphs accordingly.

SEC. 109. TRAINING, TECHNICAL ASSISTANCE, AND OTHER ACTIVITIES.

Section 678A of the Community Services Block Grant Act (42 U.S.C. 9913) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A), by striking ''corrective action'' and all that follows through ''; and'' and inserting ''monitoring and such additional corrective actions as may be needed to strengthen the management and programmatic practices of eligible entities;''; and

(B) by striking subparagraph (B) and inserting the following:

''(B) for State and local performance reporting and program data collection activities related to programs carried out under this subtitle;

''(C) for the preparation of reports provided for in section 678E;

''(D) for the development and promulgation of a common State Financial and Organizational Protocol that is required to be used by States under section 678B(b); and

''(E) to distribute amounts in accordance with subsection (c).'';

(2) in subsection (b)(2), by striking ''an ongoing procedure for obtaining input from the national and State networks of eligible entities'' and inserting ''a strategic plan for annual technical assistance developed in consultation with the national and State networks of eligible entities regarding their management support needs''; and

(3) in subsection (c)(1), by striking ''management information'' and all that follows through the period, and inserting ''improving management information and reporting systems, measuring of program results, ensuring responsiveness to identified local needs, and reporting and disseminating successful practices and initiatives.''.

SEC. 110. MONITORING.

Section 678B of the Community Services Block Grant Act (42 U.S.C. 9914) is amended—

(1) in the section heading by striking ''***OF ELIGIBLE ENTITIES***'';

(2) in subsection (a)—

(A) by striking the subsection heading and inserting ''MONITORING OF ELIGIBLE ENTITIES'';

(B) in paragraph (1)—

(i) by inserting ''biennial'' after ''onsite''; and

(ii) by striking ''at least once during each 3 year period'';

(C) by striking paragraph (2);

(D) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(E) in paragraph (2) (as so redesignated), by inserting ''annual'' after ''Followup'';

(3) by redesignating subsections (b) and (c) as subsection (c) and (d), respectively;

(4) by inserting after subsection (a) the following:

''(b) FINANCIAL AND ORGANIZATIONAL ASSESSMENT PROTOCOL.—Beginning in fiscal year 2006,

States shall implement a financial and organizational assessment protocol to monitor and evaluate the compliance of eligible entities with the financial and administrative requirements of this section. Such protocol shall incorporate the fiscal and organizational review procedures and standards appropriate to the management of Federal funds under this subtitle and the governance of the eligible private non-profit corporations or other eligible entities. The Secretary shall require the protocol to be developed jointly by the States and eligible entities and shall assist States in developing appropriate training for personnel monitoring the uses of funds under this subtitle according to the requirements of this section.''; and

(5) in subsection (d), as so redesignated, by striking the last sentence and inserting the following: ''The Secretary shall annually submit a report including the results of the evaluations conducted under this subtitle, the State performance reports provided for pursuant to section 678E(a)(1)(C), and other material as provided by section 678E(b)(2) to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.''.

SEC. 111. CORRECTIVE ACTION; TERMINATION AND REDUCTION OF FUNDING.

Section 678C of the Community Services Block Grant Act (42 U.S.C. 9915) is amended—

(1) in subsection (a)—

(A) in paragraph (4), by striking ''and'' at the end; and

(B) by striking paragraph (5) and inserting the following:

''(5) if the eligible entity fails to correct the deficiency, notify the entity—

''(A) that the State intends to initiate proceedings to terminate the designation of the entity as an eligible entity or to reduce, from the previous year, the proportion of the total funding received by the State under this subtitle that is allocated to the eligible entity;

''(B) that the eligible entity has the right to a hearing on the record to determine if there is cause for such termination or reduction in funding, as defined in section 676(c), and that the request for a hearing must be made in writing to the State within 30 days of receipt of the notice from the State; and

''(C) of the legal basis for the proposed termination or reduction in funding, the factual findings on which the proposed termination or reduction in funding is based or a reference to specific findings in another document that form the basis for the proposed termination or reduction in funding (such as a reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, agreements, regulations, or State plan; and

''(6) if the eligible entity requests a hearing, conduct a hearing on the record to determine if there is cause for termination or a reduction in funding, as defined in section 676(c).'';

(2) in subsection (b)—

(A) by striking ''review such a determination'' and inserting ''review and either approve, or disapprove and reverse, such a determination'';

(B) by striking ''90 days'' each place that it appears and inserting ''30 days''; and

(C) by striking ''90th day'' and inserting ''30th day''; and

(3) in subsection (c), by adding at the end the following: ''The Secretary shall continue to fund an eligible entity, in an amount equal to the same proportion of total funds received by the State under this subtitle as was allocated to the eligible entity the previous year, until the Secretary approves, or disapproves and reverses, the determination of termination or reduction in funding with respect to the State.''.

SEC. 112. FISCAL CONTROLS, AUDITS, AND WITHHOLDING.

Section 678D of the Community Services Block Grant Act (42 U.S.C. 9916) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (C), by striking ''and'' at the end;

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C), the following:

''(D) notwithstanding paragraph (2)(B), beginning in fiscal year 2004, and not less than every 4 years thereafter, each State shall submit to the Secretary a separate audit of the funds appropriated under this subtitle that—

''(i) shall apply only to—

''(I) State disbursement of funds to eligible entities;

''(II) use of funds for State administrative expenses; and

''(III) State disbursement of assistance provided under section 680; and

''(ii) shall be funded—

''(I) first, through the funds available for administrative expenses under section 675C(b)(2); and

''(II) second, from any funds received by the State through assistance provided under section 680; and

''(E) submit full financial reports to the Secretary not later than 6 months following the end of each fiscal year; and''; and

(2) in subsection (b)(1), by adding at the end the following: ''The Secretary, after providing adequate notice, shall withhold administrative funds described in section 675C(b)(2) from any State that fails to comply with the provisions of sections 678A through 678D(a), and may, after an opportunity for a hearing conducted within the affected State, withhold funds from the State and provide such funds directly to the eligible entities in such State upon a demonstration of the compliance by such entities with the requirements of this subtitle.''

SEC. 113. ACCOUNTABILITY AND REPORTING REQUIREMENT.

Section 678E of the Community Services Block Grant Act (42 U.S.C. 9917) is amended to read as follows:

''SEC. 678E. ACCOUNTABILITY AND REPORTING REQUIREMENTS.

''(a) STATE ACCOUNTABILITY AND REPORTING REQUIREMENTS.—

''(1) PERFORMANCE MEASUREMENT OF ELIGIBLE ENTITIES.—

''(A) IN GENERAL.—Each State that receives funds under this subtitle shall participate, and shall ensure that all eligible entities in the State participate, in a performance measurement system, which may be a performance measurement system for which the Secretary facilitated development pursuant to subsection (b), or an alternative system that the Secretary is satisfied meets the requirements of subsection (b).

''(B) LOCAL AGENCIES.—The State may elect to have local agencies that are subcontractors of the eligible entities under this subtitle participate in the performance measurement system. If the State makes that election, references in this section to eligible entities shall be considered to include the local agencies.

''(C) PERFORMANCE MEASUREMENT OF STATES.—Not later than 1 year after the date of enactment of the Poverty Reduction and Prevention Act, the Secretary shall establish, in consultation with States and eligible entities, performance standards for the State administration of block grant funds. Such standards shall include standards relating to—

''(i) the timeliness of the availability of State plans for public comment as required under section 676(a)(2)(B) and of submission of such plans to the Secretary as required in section 676(b);

''(ii) the utilization of the financial and organizational assessment protocol established under section 678B(b), including the training and skills of State personnel responsible for such oversight, the completion of annual monitoring, the identification of opportunities for improvement, and the implementation of plans to enhance the management capacity and infrastructure of eligible entities;

''(iii) the timeliness of the distribution of block grants funds to eligible entities as provided in section 675C(a);

''(iv) the resources made available for management development at eligible entities, including monitoring, training, and assistance with financial management and program information and assessment systems;

''(v) the results of State efforts to coordinate eligible entity programs with other State programs for low-income individuals and their families, especially participants in the program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) and other working families, and to ensure the participation of eligible entities in the development of statewide strategies to reduce poverty; and

''(vi) the assistance provided to eligible entities in securing private partnerships as required in section 676(b).

''(2) ANNUAL REPORT.—Each State shall annually prepare and submit to the Secretary a report on the measured performance of the State and the eligible entities in the State. The State shall include in the report any information collected by the State relating to such performance. Each State shall also include in the report an accounting of the expenditure of funds received by the State through the community services block grant program, including an accounting of funds spent on administrative costs by the State and the eligible entities, funds spent by eligible entities on the direct delivery of local services, and the achievement of national goals established under the procedures described in this section, and shall include information on the number of and characteristics of clients served under this subtitle in the State, based on data collected from the eligible entities. The State shall also include in the report a summary describing the training and technical assistance offered by the State under section 678C(a)(3) during the year covered by the report.

''(b) LOCAL ENTITY ACCOUNTABILITY AND REPORTING REQUIREMENTS.—

''(1) LOCAL ENTITY DETERMINED GOALS.—In order to be designated as an eligible entity and to receive a grant under this subtitle, an entity shall establish entity-determined goals for reducing poverty in the community, including goals for—

''(A) leveraging community resources;

''(B) fostering coordination of Federal, State, local, private, and other assistance; and

''(C) promoting community involvement.

''(2) DEMONSTRATION THAT GOALS WERE MET.—In order to receive a grant subsequent to the first grant that is provided to an eligible entity following the date of enactment of the Poverty Reduction and Prevention Act, the entity shall demonstrate to the State that substantial progress has been made in meeting the goals of the entity as described in paragraph (1).

''(3) GOALS OR PERFORMANCE MEASURES.—Any specific goals or performance measures, for an individual eligible entity, that are used in any monitoring or review process under this subtitle, shall be—

''(A) determined by the entity;

''(B) agreed on by the State involved and the entity, during the planning process leading to the grant involved; and

''(C) incorporated into the grant agreement between the State and entity for each subsequent award cycle.

''(4) PROCEDURES.—If the State determines that a failure to meet goals established under this subsection shall be a basis for terminating the designation or reducing the funds of an eligible entity under this subtitle, and determines that an eligible entity has failed to meet the goals, the procedures set forth in section 678C shall apply.

''(c) SECRETARY'S ACCOUNTABILITY AND REPORTING REQUIREMENTS.—

''(1) FEDERAL PERFORMANCE MEASUREMENT.—The Secretary shall establish goals for the Department of Health and Human Services Office of Community Services with respect to—

''(A) the timeliness of the distribution of funds under this subtitle, including funds for training and technical assistance;

''(B) the monitoring of States as provided for in section 678D;

''(C) the coordination of other Office of Community Service programs with the activities of States and eligible entities under this subtitle; and

''(D) the full and timely reporting as required in this section.

''(2) LOCAL PERFORMANCE MEASUREMENT.—

''(A) IN GENERAL.—To the maximum extent practicable, the Secretary shall coordinate reporting requirements for all programs of the Department of Health and Human Services that are managed by eligible entities so as to consolidate and reduce the number of reports required relating to individuals, families, and uses of grant funds, specifically funds under the Head Start Act (42 U.S.C. 9831 et seq.), the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), child care programs administered by the Department, and health related service programs administered by the Department.

''(B) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance, including support for the enhancement of electronic data systems, to States and to eligible entities to enhance their capability to collect and report data for such a system and to aid in their participation in such a system.

''(C) LOCAL ENTITY PERFORMANCE MEASUREMENT SYSTEM.—The Secretary shall assist in the implementation of a local entity performance measurement system, and other voluntary programmatic and results reporting systems, developed by States, eligible entities, and their national associations acting together. The Secretary and the developers of such systems shall ensure that the set of measures are numerous enough to cover the full range of services offered by all local eligible entities. Under such a system, local eligible entities shall only be compelled to collect data on the subset of performance measures that reflect their community-specific programs and services currently adopted. Eligible entities shall not be required under this subparagraph to alter the collection of data for any reports provided for other programs within the Department of Health and Human Services or other Federal agencies. States shall compile annual Results Oriented Management and Accountability System reports for the Secretary under this subparagraph.

''(3) REPORTING REQUIREMENTS.—For each fiscal year the Secretary shall, directly or by grant or contract, prepare a report containing—

''(A) a summary of the planned use of funds by each State, and the eligible entities in the State, under the community services block grant program, as contained in each State plan submitted pursuant to section 676;

''(B) a description of how funds were actually spent by the State and eligible entities in the State, including a breakdown of funds spent on administrative costs and on the direct delivery of local programs by eligible entities;

''(C) information on the number of entities eligible for funds under this subtitle, the number of low-income persons served under this subtitle, and such demographic data on the low-income populations served by eligible entities as is determined by the Secretary to be feasible;

''(D) a comparison of the planned uses of funds for each State and the actual uses of the funds;

''(E) a summary of each State's performance results, and the results for the eligible entities, as collected and submitted by the States in accordance with subsection (a)(2); and

''(F) any additional information that the Secretary considers to be appropriate to carry out this subtitle, if the Secretary informs the States of the need for such additional information and allows a reasonable period of time for the States to collect and provide the information.

''(4) SUBMISSION.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate the report described in paragraph (2), and any comments the Secretary may have with respect to such report. The report shall include definitions of direct and administrative costs used by the Department of Health and Human Services for programs funded under this subtitle.

''(5) COSTS.—Of the funds reserved under section 674(b)(3), not more than $500,000 shall be available to carry out the reporting requirements contained in paragraph (3).''.

SEC. 114. LIMITATIONS ON USE OF FUNDS.

Section 678F(c)(1) of the Community Services Block Grant Act (42 U.S.C. 9918(c)(1)) is amended by inserting ''religion,'' after ''race,''.

SEC. 115. OPERATIONAL RULE.

Section 679(a) of the Community Services Block Grant Act (42 U.S.C. 9920(a)) is amended by inserting ''and such organization meets the requirements of this subtitle'' before the first period.

SEC. 116. DISCRETIONARY AUTHORITY OF THE SECRETARY.

Section 680 of the Community Services Block Grant Act (42 U.S.C. 9921) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) by redesignating subparagraphs (B) through (E) as subparagraph (D) through (G), respectively;

(ii) by striking subparagraph (A) and inserting the following:

''(A) ECONOMIC DEVELOPMENT ACTIVITIES.—The Secretary shall make grants described in paragraph (1) on a competitive basis to private, nonprofit organizations that are community development corporations to provide technical and financial assistance for economic development activities, including business, economic, and community development projects, designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities. Such assistance shall include—

''(i) long term loans (up to 15 years) or investments for private business enterprises;

''(ii) providing capital to businesses owned by community development corporations; and

''(iii) marketing and management assistance for businesses providing jobs and business opportunities to low-income individuals.

''(B) FEDERAL INTEREST.—

''(i) IN GENERAL.—The Secretary shall establish procedures that permit an eligible entity who receives funds under a grant to carry out this paragraph, or intangible assets acquired with such funds, to become the sole owner of the funds or assets before the end of the 12-year period beginning at the end of the fiscal year for which the grant is made.

''(ii) CONDITIONS.—To be eligible to become the sole owner, the eligible entity shall agree—

''(I) to use the funds or assets for the purposes and uses for which the grant was made, or purposes and uses consistent with this subtitle, during and after the 12-year period described in clause (i), whether or not the eligible entity continues to be supported by Federal funds; and

''(II) that, when the eligible entity no longer needs the funds or assets for purposes and uses described in subclause (I), the eligible entity shall request instructions from the Secretary about the disposition of the funds or assets.

''(iii) ENCUMBERING.—The eligible entity may not encumber the assets without the approval of the Secretary.

''(C) ADMINISTRATIVE REQUIREMENTS.—In a case in which an eligible project under grant made under this section cannot, for good cause, be implemented, the Secretary shall establish a policy to permit the substitution of other eligible projects. Such policy shall require that such project have the same impact area, the same goals, and the same objectives as the original project and outcomes that are substantially the same as the original project.'';

(iii) in subparagraph (E) (as so redesignated), by striking ''the community'' and inserting ''the service area''; and

(iv) in subparagraph (G) (as so redesignated), by striking ''1 percent'' and inserting ''2 percent'';

(B) in paragraph (3)(B), by striking ''community'' and inserting ''water and waste water''; and

(C) in paragraph (4), by striking ''individuals and families'' and inserting ''individuals and their families''; and

(2) in subsection (c), by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''.

SEC. 117. COMMUNITY FOOD AND NUTRITION PROGRAMS.

Section 681 of the Community Services Block Grant Act (42 U.S.C. 9922) is amended—

(1) in subsection (c), by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''; and

(2) in subsection (d), by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

SEC. 118. NATIONAL OR REGIONAL PROGRAMS DESIGNED TO PROVIDE INSTRUCTIONAL ACTIVITIES FOR LOW-INCOME YOUTH.

Section 682 of the Community Services Block Grant Act (42 U.S.C. 9923) is amended—

(1) in subsection (b)(2), by striking ''or treatment''; and

(2) in subsection (g), by striking ''$15,000,000 for each of fiscal years 1999 through 2003'' and inserting ''$18,000,000 for each of fiscal years 2004 through 2009''.

TITLE II—LOW-INCOME HOME ENERGY ASSISTANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Low-Income Home Energy Assistance Amendments of 2003''.

SEC. 202. REAUTHORIZATION.

(a) IN GENERAL.—Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended in the first sentence by striking ''such sums'' and all that follows through the period and inserting ''and $3,400,000,000 for each of fiscal years 2004 through 2006, and such sums as may be necessary for each of fiscal years 2007 through 2010.''.

(b) PROGRAM YEAR.—Section 2602(c) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(c)) is amended by inserting ''authorized'' after ''programs and activities''.

(c) INCENTIVE PROGRAM FOR LEVERAGING NON-FEDERAL RESOURCES.—Section 2602(d) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(d)) is amended—

(1) in paragraph (1), by striking ''1999 through 2004'' and inserting ''2004 through 2010''; and

(2) in paragraph (2), by striking ''1999 through 2004'' and inserting ''2004 through 2010''.

SEC. 203. NATURAL DISASTERS AND OTHER EMERGENCIES.

Section 2604(e) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(e)) is amended by adding at the end the following:

''Notwithstanding any other provision of this section, for purposes of making determinations under section 2603(1)(C), if the Secretary determines that there is an increase of at least 20 percent in the cost of home energy over the previous 5-year average for a duration of a month or more in 1 or more States or regions, the Secretary shall declare an energy emergency in the affected area and shall make available funds as

provided in this subsection. Notwithstanding any other provision of this section, for purposes of making such determinations, if the Secretary determines that the number of heating degree days or cooling days for a month was more than 100 above the 30-year average in 1 or more States or regions, the Secretary shall declare an energy emergency in the affected area and shall make available funds as provided in this subsection.''.

SEC. 204. RESIDENTIAL ENERGY ASSISTANCE CHALLENGE OPTION.

(a) EVALUATION.—The Comptroller General of the United States shall conduct an evaluation of the Residential Energy Assistance Challenge program described in section 2607B of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8626b).

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing—

(1) the findings resulting from the evaluation described in subsection (a); and

(2) the State evaluations described in paragraphs (1) and (2) of section 2607B(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8626b(b)).

SEC. 205. REPORT TO CONGRESS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study on the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.)

(2) REQUIREMENTS.—In conducting the study under subparagraph (A), the Secretary of Health and Human Services shall—

(A) evaluate the performance of the Low-Income Home Energy Assistance Program, including who the program is serving, the benefits of the program to recipients, and the ability of the program to reduce utility arrearage and shutoffs among low-income households;

(B) develop a protocol for States to collect information from energy distribution companies, including electric, natural gas, heating oil, and propane companies, concerning the following residential customer statistics—

(i) the number of accounts certified as eligible for energy assistance;

(ii) the number of accounts certified as eligible for energy assistance and that are past due;

(iii) the total revenue owed on accounts eligible for energy assistance and that are past due;

(iv) the number of disconnection notices issued on accounts eligible for energy assistance;

(v) the number of disconnections for nonpayment;

(vi) the number of reconnections;

(vii) the number of accounts eligible for energy assistance and determined uncollectible; and

(viii) the energy burden of accounts eligible for energy assistance;

(C) analyze the public health and safety threats of hypothermia and hyperthermia due to a lack of home heating or home cooling, including mortality, morbidity, and decrease in caloric intake;

(D) analyze the affect of the standard of housing and housing age on energy costs to low-income households;

(E) evaluate regional difference in cost-of-living and the ability of low-income families to meet home energy requirements; and

(F) determine the programmatic impacts of using 60 percent of State median income to determine low-income households.

(b) REPORT.—Not later than 24 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report containing the results of the study conducted under subsection (a).

(c) DEFINITION.—In this section, the term ''State'' means each of the 50 States and the District of Columbia.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each of fiscal years 2004 and 2005.

(e) CONTRACTS.—Using amounts appropriated under subsection (d), the Secretary of Health and Human Services may enter into contracts or jointly financed cooperative agreements or interagency agreements with States and public agencies and private nonprofit organizations to conduct the study under subsection (a).

TITLE III—ASSETS FOR INDEPENDENCE REAUTHORIZATION ACT

SEC. 301. SHORT TITLE.

This title may be cited as the ''Assets for Independence Reauthorization Act''.

SEC. 302. REAUTHORIZATION OF THE ASSETS FOR INDEPENDENCE ACT.

(a) DEFINITION OF QUALIFIED EXPENSES.—Section 404(8) of the Assets for Independence Act (42 U.S.C. 604 note) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting ''or to a vendor following approval by a qualified entity upon submission of an approved qualified education purchase plan'' before the period; and

(B) by adding at the end the following:

''(iii) QUALIFIED EDUCATION PURCHASE PLAN.—The term 'qualified education purchase plan' means a document that explains the education item to be purchased which—

''(I) is approved by a qualified entity; and

''(II) includes a description of the good to be purchased.'';

(2) in subparagraph (D), by striking ''eligible''; and

(3) by adding at the end the following:

''(E) SAVING IN IDAS FOR DEPENDENTS.—Amounts paid to an individual development account established for the benefit of a dependent (as such terms is defined for purposes of subparagraph (D)(ii)) of an eligible individual for the purpose of postsecondary education.''.

(b) REPEAL OF PROVISION.—Section 405 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking subsection (g).

(c) RESERVE FUND.—Section 407 of the Assets for Independence Act (42 U.S.C. 604 note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(ii) by inserting before subparagraph (B) (as so redesignated) the following:

''(A) all grant funds provided to the qualified entity from the Secretary for the purpose of the demonstration project as described under subsection (c)(1);'' and

(B) by adding at the end the following:

''(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1)(A) shall be construed to preclude a qualified entity from depositing other demonstration project funds into the Reserve Fund.''; and

(2) in subsection (d), by inserting ''the date that is 12 months after'' after ''upon''.

(d) USE OF AMOUNTS.—Section 407(c) of the Assets for Independence Act (42 U.S.C. 604 note) is amended by adding at the end the following:

''(4) USE OF NONFEDERAL FUNDS.—

''(A) IN GENERAL.—Notwithstanding paragraph (3), not more than 20 percent of the amount of non-Federal funds committed to a project as matching contributions in accordance with the application submitted by the qualified entity under section 405(c)(4) shall be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).

''(B) PRIORITY.—In awarding grants under section 406(b), the Secretary shall give priority to qualified entities that submit applications that, with respect to the commitment of non-Federal funds under section 405(c)(4), provide assurances that not to exceed 15 percent of such non-Federal funds will be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).''.

(e) ELIGIBILITY FOR PARTICIPATION.—Section 408(a)(1) of the Assets for Independence Act (42 U.S.C. 604 note) is amended to read as follows:

''(1) INCOME TEST.—The—

''(A) gross income of the household is equal to or less than—

''(i) 200 percent of the poverty line (as determined by the Secretary of Health and Human Services);

''(ii) the earned income amount described in section 32 of the Internal Revenue Code of 1986 (taking into account the size of the household); or

''(iii) 80 percent of the Area Median Income (as determined by the Department of Housing and Urban Development); or

''(B) the modified adjusted gross income of the household for the previous year does not exceed $18,000 for an individual filer, $30,000 for a head of household, or $38,000 for a joint filer.''.

(f) DEPOSITS BY QUALIFIED ENTITIES.—Section 410 of the Assets for Independence Act (42 U.S.C. 604 note) is amended—

(1) in subsection (a), by striking ''qualified entity—'' and all that follows through the end and inserting the following: ''qualified entity, a matching contribution of not less than $0.50 and not more than $4 for every $1 of earned income (as defined in section 911(d)(2) of Internal Revenue Code of 1986) deposited in the account and interest earned on that account by a project participant during that period. Matching contributions shall be made—

''(1) from the non-Federal funds described in section 405(c)(4); and

''(2) from the grant made under section 406(b); based on a ratio relating to the sources of funds described in paragraph (1) and (2) as determined by the qualified entity, consistent with the requirements of section 407(c).'';

(2) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(3) by inserting after subsection (a), the following:

''(b) USE OF EXCESS INTEREST ON MATCHING FUNDS EARNED ON THE RESERVE FUND.—Interest that accrues on the matching funds earned and held in the Reserve Fund, over and above the interest required to match an individual's deposits and interest earned in the individual development account, shall be used by the qualified entity to fund existing individual development accounts or additional individual development accounts.''.

(g) AUTHORIZATION OF APPROPRIATIONS.—Section 416 of the Assets for Independence Act (42 U.S.C. 604 note) is amended by striking ''and 2003,'' and inserting ''and 2003, $25,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008,''.

(h) APPLICATION OF AMENDMENTS.—In administering the Assets for Independence Act (42 U.S.C. 604 note), the Secretary of Health and Human Services shall apply—

(1) the amendments made by the Assets for Independence Act Amendments of 2000 to individuals who were individual development account holders, and to entities that received grants, under the Assets for Independence Act either before or after the date of enactment of the Assets for Independence Act Amendments of 2000; and

(2) the amendments made by this section to individuals who were individual development account holders, and to entities that received grants, under the Assets for Independence Act either before or after the date of enactment of this Act.

Mr. FRIST. I ask unanimous consent that the committee amendment be

agreed to, the bill as amended be read a third time and passed, the motion to reconsider be laid on the table, and any statements relating to the bill be printed in the RECORD.

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

The committee amendment was agreed to.

The bill was read the third time and passed.

MEASURE READ THE FIRST TIME—S. 2095

Mr. FRIST. I understand that S. 2095, introduced earlier today, is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant journal clerk read as follows:

A bill (S. 2095) to enhance energy conservation and research and development and to provide for security and diversity in the energy supply for the American people.

Mr. FRIST. I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard.

AUTHORITY TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS

Mr. FRIST. Mr. President, I ask unanimous consent that during this adjournment of the Senate the majority leader or the assistant majority leader be authorized to sign duly enrolled bills or joint resolutions.

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

AUTHORITY FOR COMMITTEES TO FILE REPORTS

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the recess committees be allowed to file reports on Wednesday, February 18, between the hours of 10 a.m. and 12 noon.

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

PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE HOUSE AND SENATE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 361, the adjournment resolution, that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 361) was agreed to, as follows:

H. CON. RES. 361

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Wednesday, February 11, 2004, it stand adjourned until 2 p.m. on Tuesday, February 24, 2004, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns on Thursday, February 12, 2004, Friday, February 13, 2004, or Saturday, February 14, 2004, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, February 23, 2004, or at such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

Mr. FRIST. Mr. President, at this juncture, I have several statements and comments I will make. I will be happy to turn to the Democrat leader if he has comments which he wishes to make.

PASSAGE OF S. 1072

Mr. DASCHLE. Mr. President, I commend the majority leader for the efforts we have made in the last 2 weeks to complete our work on the highway bill. This was not an easy task, but I think we can look back with some satisfaction having achieved our goal.

Again, I appreciate the cooperation on both sides in an effort to complete our work. I have no other comments at this point.

CLOSING THE HEALTH CARE GAP OF 2004

Mr. FRIST. Mr. President, I want to spend a few minutes to make some comments on some current issues that occurred over the course of the day and in the news. To begin with, I wish to make a statement on a bill I had the opportunity to introduce earlier today but have not yet taken the opportunity to comment on, a bill entitled Closing the Health Care Gap of 2004.

I was proud to join today with my colleagues, Senator MARY LANDRIEU, Senator THAD COCHRAN, Senator MIKE DEWINE, Senator KIT BOND, Senator JAMES TALENT, Senator JOHN WARNER, and Senator KAY BAILEY HUTCHISON to introduce this bill, Closing the Health Care Gap of 2004. It is a bill that addresses a major problem and a major challenge we have today in health care; that is, health care disparities.

Last year, I outlined the framework for action to combat these health care disparities that plague our Nation's health care system. Since then, we have reached out broadly to a wide range of national leaders and Senate colleagues to gather their input and their ideas. As a result, I believe that legislation embodies an effective strategy to reduce and work toward elimination of these health care disparities.

Over recent years, we have made tremendous advances in our knowledge of and our fight against disease. But we know millions of Americans today still experience disparities in health outcomes as a result of ethnicity, or race, or gender, or limited access to quality health care.

A couple of examples: Disparity populations exhibit poor health outcomes and have higher rates of HIV/AIDS, diabetes, cancer, infant mortality, and heart disease. The list of illnesses goes on and on. African Americans and Native Americans die younger than any other racial or ethnic group. African American and Native American babies die at significantly higher rates than the rest of the population. Native Americans, Hispanic Americans, and African Americans are twice as likely to suffer from diabetes and experience serious complications from their disease. Today these gaps are simply unacceptable. Today we begin a new and aggressive effort to address these inequities.

This bill—Closing the Health Care Gap Act of 2004—addresses the root causes of health care disparities by focusing on five key areas.

First, expanding access to quality health care.

Second, strengthening national leadership efforts and coordination.

Third, helping increase the diversity of health care professionals.

Fourth, promoting more aggressive health professional education intended to reduce barriers to care.

Fifth, enhancing research to identify sources of racial, of ethnic, and geographic disparities and assess promising intervention strategies.

Every American believes that the best quality of health care possible, regardless of race, ethnicity, gender, or where they live, is deserving. The bipartisan ''closing the health care gap'' would go a long way toward achieving this goal.

I appreciate the support of so many colleagues and prominent outside organizations, including the National Medical Association, the National Hispanic Medical Association, the Urban League, and the National Conference for Community and Justice. Together, we can make real progress toward eliminating health care disparities, closing the Health Care Gap Act of 2004.

CLONING IN SOUTH KOREA

Mr. FRIST. Mr. President, this morning, many awoke to the news that South Korean scientists have successfully cloned a mature human embryo. This is an alarming development. Decades ago C.S. Lewis saw the dangers facing human dignity. In his essay ''The Abolition of Man,'' he warned in conquering nature, nature is actually conquering mankind. To clone a human being is to move from procreation to the manufacture of human life. And this is dangerous.

My own profession is medicine. A good physician, must, I fundamentally believe, also be a very good scientist. I can tell you from my own experiences as a heart and lung transplant surgeon that without the revolutionary advances in medical science and in technology, my own transplant patients, heart and lung transplant patients of a decade ago, simply would not be alive today.

Indeed, we must reject an irrational fear of technological advance. But the secret of human dignity is living within limits. Those are ethical limits and they are moral limits. They are limits that do not hamper human advances but they preserve them and indeed they promote them.

We strongly support ethical stem cell research but we reject the cloning of human beings. Not only does human cloning experimentation of any kind offend the conscience, it is not medically necessary. As I have said on many occasions, there is no scientific basis to claim that human cloning experimentation is necessary for the long-term success or clinical application of stem cell research. If human beings are special, if human beings are truly sacred, then we must devote ourselves to a better world but we must not do evil to bring about good.

SAME-SEX MARRIAGE

Mr. FRIST. On another issue, and to the best of my knowledge ongoing now, the Massachusetts Legislature is wrestling with how to respond to their supreme court, which has made same-sex marriage the law of that State. Even if the Massachusetts Legislature is successful in passing the constitutional amendment to block same-sex marriage, it will not come before voters for ratification for another 2 years.

Beginning on May 17 of this year, Massachusetts will begin issuing marriage licenses to same-sex couples. Once these same-sex couples sue for recognition in their home States, the wildfire will truly begin. Same-sex marriage is likely to spread to all 50 States in the coming years. So regardless of what Massachusetts does today, it is becoming increasingly clear that Congress must act and must act soon. The Senate will begin working on the issue in the weeks ahead.

This is not a fight we sought, and it is a fight we do not particularly relish, but the courts have brought us to it, and the people of this country will respond. We will not let activist judges redefine marriage for our entire society.

We reject intolerance. We reject hatred. We must treat all our fellow citizens with kindness and with civility. But marriage should remain what it has always been in our Nation, and that is the union of a man and a woman.

It is my hope the Massachusetts legislature will act today.

MEDICARE

Mr. FRIST. Mr. President, there is one final issue that also is current that I want to take the opportunity to comment on because it is likely to be an issue that will be of interest and debated, and one people will be addressing over the coming days while we are on our recess.

Last year, President Bush and a bipartisan team of Senators and Representatives made good on our promise to strengthen and expand and improve Medicare for America's seniors. The bill, the Medicare Modernization Act of 2003, represents the most significant improvement to Medicare in two generations. And now, because of this historic action, we are starting to see impressive results.

We said reform would strengthen the program and increase choice and flexibility for our seniors. That is exactly what is happening. Medicare now gives more seniors access to more prescription drugs at a lower out-of-pocket cost. It provides seniors relief from the high cost of prescription drugs, especially the 12 million low-income seniors who need the help the most.

The improvements to Medicare provide seniors with choice and control over their own health care plans. The new bill also protects seniors who already have prescription drug coverage they earned in the workplace.

Educating seniors about improvements to the Medicare program and the new Medicare drug benefit is the right thing to do. It is also required by law. The law says seniors have the right to know how the prescription drug benefit is going to work and when they can start taking advantage of the new improvements to the program, such as the drug discount card.

Unfortunately, some of my colleagues are attempting to subvert this legal obligation. They are blocking our legally required educational efforts. Why? Because they are trying to keep seniors from finding out their rights. They fear that the more seniors learn about the new Medicare benefits, the more seniors will like what they see.

Not only are the Medicare opponents trying to keep seniors in the dark about their Medicare rights, these opponents are disparaging the education effort itself. But try as they may, they will not keep the truth under wraps.

This is the ad they do not want you to see.

It reads:

First senior: So how is Medicare changing?

The announcer: It is the same Medicare you have always counted on, plus more benefits like prescription drug coverage.

Senior No. 2: Can I keep my Medicare just how it is?

The announcer responds: Yes, you can always keep your same Medicare coverage.

Senior No. 3: Will I save on my medicines?

Announcer: You can save with Medicare drug discount cards this June and save more with prescription drug coverage in 2006.

Senior 4: So my Medicare isn't different, it is just more?

Announcer: Right. And you can learn more, call 1–800–MEDICARE.

That is it. That is the Medicare ad opponents are doing everything possible to keep off the air. They don't want seniors to know they are eligible to receive prescription drug coverage under Medicare, nor do they want seniors to know that starting in June, seniors will be able to carry a drug discount card. The opponents don't even want seniors to know the number to call to ask for help. Instead, they are putting politics before people.

They will not succeed. We will not allow election year politics to hurt America's seniors and individuals with disabilities. We will make sure every senior, every individual with a disability gets the information they need to make the very best choices they can for their health and for their life.

ORDERS FOR MONDAY, FEBRUARY 23, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon, Monday, February 23; I further ask 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 for their use later in the day, and Senator BREAUX then be recognized to deliver George Washington's Farewell Address, as provided under the previous order; provided that upon the conclusion of the address, the Senate then resume debate on the motion to proceed to Calendar No. 429, S. 2061, the medical malpractice bill.

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

PROGRAM

Mr. FRIST. Mr. President, on Monday, February 23, following Senator BREAUX's reading of George Washington's Farewell Address, the Senate will resume consideration of the motion to proceed to Calendar No. 429, S. 2061, the medical malpractice bill. There will be no rollcall votes on Monday, but Senators are encouraged to come to the floor to debate this important bill. The next rollcall vote will occur on Tuesday, February 24. That vote will be on the motion to invoke cloture on the motion to proceed to S. 2061, and the vote will occur at 5 p.m. on Tuesday.

I, too, want to take this opportunity to thank Chairman INHOFE and Senator JEFFORDS for their hard work in moving the highway bill to conclusion. I also thank the Democratic leadership, working with our leadership, working with the managers of this bill to move forward. It has been a long 2 weeks. It has been a challenging 2 weeks. I know the managers were able to work with many Members to accommodate a large number of amendments.

I wish everyone a safe President's Day recess.

ELECTIONS IN IRAN

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 304, submitted by Senator BROWNBACK today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 304) expressing the sense of the Senate that the United States should not support the February 20, 2004, elections in Iran, and that the United States should advocate a democratic government in Iran that will restore freedom to the Iranian people and will abandon terrorism.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid on the table, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 304) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 304

Whereas there is a long history of mutual affection, appreciation, and respect between the people of the United States and the people of Iran, including the incalculable efforts by the United States in providing humanitarian, financial, and technological assistance to help the people of Iran;

Whereas the people of Iran have shown support for decency and freedom, and solidarity with the United States, including the demonstration of such support through candlelight vigils attended by the youth of Iran in the wake of the September 11, 2001, attacks upon the United States;

Whereas the Council of Guardians is a 12-member unelected body, that has arbitrarily disqualified thousands of candidates, including sitting Members of the Parliament of Iran and members of the reformist movement;

Whereas the elections scheduled to be held on February 20, 2004, in Iran are fatally flawed;

Whereas the brave efforts of the people of Iran to promote greater democracy and respect for human rights are being thwarted by the actions of the Council of Guardians;

Whereas the blatant interference of the Council of Guardians in the electoral process ensures that the elections scheduled for February 20, 2004, will be neither free nor fair; and

Whereas the circumstances in Iran clearly call into serious question whether pro-democratic reform within the regime of Iran is possible: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should not support the elections in Iran scheduled to take place on February 20, 2004, as such elections stifle the growth of the democratic forces in Iran and do not serve the national security interest of the United States;

(2) the support provided by the United States to Iran should be provided to the people of Iran; and

(3) the policy of the United States should be to advocate a democratic government in Iran that will restore freedom to the people of Iran, will abandon terrorism, will protect human rights, and will live in peace and security with the international community.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 23, 2004

Mr. FRIST. Mr. President, that brings this week to a close. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res 361.

There being no objection, the Senate, at 8:49 p.m., adjourned until Monday, February 23, 2004, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate February 12, 2004:

NUCLEAR REGULATORY COMMISSION

GREGORY B. JACZKO, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR A TERM EXPIRING JUNE 30, 2008, VICE GRETA JOY DICUS, TERM EXPIRED.

DEPARTMENT OF STATE

MILES T. BIVINS, OF TEXAS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SWEDEN.

MARC MCGOWAN WALL, 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 CHAD.

RICHARD S. WILLIAMSON, OF ILLINOIS, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE HUMAN RIGHTS COMMISSION OF THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

THE JUDICIARY

WILLIAM DUANE BENTON, OF MISSOURI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT, VICE THEODORE MCMILLIAN, RETIRED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. JASON K. KAMIYA, 0000

CONFIRMATION

Executive nomination confirmed by the Senate February 12, 2004:

DEPARTMENT OF THE TREASURY

SAMUEL W. BODMAN, OF MASSACHUSETTS, TO BE DEPUTY SECRETARY OF THE TREASURY.

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.