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Senate

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Holy, holy, holy, Lord God Almighty! Heaven and earth are filled with Your glory. Praise and thanksgiving be to You, Lord most high. Ruler of the universe, reign in us. Creator of all, recreate our hearts to love You above all else. Provider of limitless blessings, may we never forget that we have been blessed to be a blessing. Sovereign of our Nation, we commit our lives to You. We surrender any false idols of our hearts: pride, position, power, past accomplishments. Without You, we could not breathe a breath, think a thought, or devise a plan. May our only source of security be that we have been called to be both Your friends and Your servants. You are the reason for living, the only One we must please, and the One to whom we are ultimately accountable. With united minds and hearts, we dedicate the work of this Senate to You. Through our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Rhode Island is recognized.

SCHEDULE

Mr. CHAFEE. Mr. President, today the Senate will resume consideration of S. 1173, the ISTEA reauthorization bill. Under a previous consent agreement, the Senate will debate Senator BINGAMAN's amendment on liquor drive-throughs for 30 minutes, evenly divided, to be followed by an hour of debate, evenly divided, on the Dorgan amendment regarding open containers.

At 10:30, the Senate will proceed to back-to-back votes, first on the Dorgan amendment and then on the Bingaman amendment. Following those votes, it is hoped the Senate will be able to adopt the funding amendment, the so-called Chafee amendment, and then begin consideration of the McConnell amendment regarding disadvantaged businesses. In addition, we hope to enter into a time agreement with respect to the McConnell amendment immediately following those two back-to-back votes.

For the balance of the day, the Senate will continue to consider amendments to the so-called ISTEA legislation. Therefore, Members should anticipate rollcall votes into the evening.

As a reminder to all Members, the first rollcall vote today will occur at about 10:30 a.m.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. BROWNBACK). Under the previous order, the leadership time is reserved.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1173, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1173) to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

The Senate resumed consideration of the bill with a modified committee amendment in the nature of a substitute (Amendment No. 1676.)

Pending:

Chafee Amendment No. 1684 (to Amendment No. 1676), to provide for the distribution of additional funds for the Federal-aid highway program.

Mr. CHAFEE. Mr. President, I would say to all within listening distance that we are anxious to move forward with this legislation. If individuals have amendments, if they will bring them over and discuss them with us, we may be able to accept them, but we certainly will be able to give the proponent a place in line so we can move forward with getting this legislation disposed of. So, we are very, very anxious to get on with these amendments. Perhaps we can enter into time agreements, but at least we can move forward. There is a mass of amendments out there, and it is discouraging to be here with nothing going on, in a quorum call, when potentially those amendments could be taken up.

I thank the Chair, and now the Senator from New Mexico is ready to go, and that is encouraging.

The PRESIDING OFFICER. Under the previous order, the Senator from New Mexico is recognized to offer an amendment on which there shall be 30 minutes of debate, equally divided.

The Senator from New Mexico is recognized.

PRIVILEGE OF THE FLOOR

Mr. BINGAMAN. Mr. President, let me begin by first asking unanimous consent that the privilege of the floor be granted to Dan Alpert, who is a fellow on my staff, during the pendency of S. 1173 and any votes thereon.

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

Mr. BINGAMAN. Mr. President, I ask that I be allowed to use 7½ minutes of the proponents' time and Senator BYRD from West Virginia be allowed the remaining time allotted to the proponents.

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

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

AMENDMENT NO. 1696 TO AMENDMENT NO. 1676

(Purpose: To encourage States to enact laws that ban the sale of alcohol through a drive-up or drive-through sales window)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself and Mr. BYRD, proposes an amendment numbered 1696.

Mr. BINGAMAN. 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:

On page 236, between lines 16 and 17, insert the following:

SEC. 14___. BAN ON SALE OF ALCOHOL THROUGH DRIVE-UP OR DRIVE-THROUGH SALES WINDOWS.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

"§ 154. Ban on sale of alcohol through drive-up or drive-through sales windows

''(a) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

''(1) FISCAL YEAR 2000.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2000, if the State does not meet the requirements of paragraph (3) on that date.

''(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2001, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

''(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law (including a regulation) that bans the sale of alcohol through a drive-up or drive-through sales window.

''(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

''(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

''(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2002.—Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 2002, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

''(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 2002.—No funds withheld under this section from apportionment to any State after September 30, 2002, shall be available for apportionment to the State.

''(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

''(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

''(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

''(B) TREATMENT OF CERTAIN FUNDS.—Sums not obligated at the end of the period referred to in subparagraph (A) shall lapse.

''(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall lapse.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 153 the following:

''154. Ban on sale of alcohol through drive-up or drive-through sales windows.''.

Mr. BINGAMAN. Mr. President, the problem of drunk driving has been discussed here for a day or two now. It is clear to all of us that this problem is one that wreaks a terrible toll on our communities, a terrible toll on the young people of this country. One statistic that I cited yesterday, and that I think should be of concern to all of us, is that the single largest cause, the greatest cause of death among our young people between the ages of 15 and 20 is driving-related accidents. That is something we need to all be concerned about. Most of those accidents—so-called accidents—relate to alcohol.

A significant contributor to the problem, I believe, is the sale of liquor through drive-up or drive-through windows. We all hear speeches and give speeches about how we do not believe we should combine drinking and driving. That is sort of a common refrain throughout our country and has been for many years. But if you want to know the time and the place and the circumstance where that mixing most obviously occurs, it is when a person drives a car up to a liquor store that has a drive-up window and that person sitting in the car as the driver of that car buys liquor or alcoholic beverages. Allowing the sales through these drive-up windows has the practical effect of preventing effective enforcement of many of our other laws. It also sends completely the wrong message to the driver and the public about refraining from drinking and driving. Let me give three examples.

Under a law which has been adopted in virtually every State, it is against the law to sell liquor to a minor. In fact, we put that on the highway bill several years ago. We put a requirement in that States prohibit the sale of liquor to minors and, in fact, prohibit the sale of liquor to anyone less than 21 years old.

But any young person or any law enforcement officer will tell you that sales to minors are still common in our country. A main way in which minors are able to purchase liquor and alcoholic beverages is by presenting a false ID to someone who is selling them liquor through a drive-up window. It is virtually impossible for a clerk selling through a drive-up window to see clearly who is buying the liquor, to make a good comparison between an identification which may be false in the first place with the person who is sitting there offering them money. So, having these drive-up liquor sales makes it easy for sales to minors to occur, in violation of the law.

It is also, of course, against the law in most States to sell to someone who is already intoxicated. Again, having sales of liquor through drive-up windows makes it very difficult to enforce this law. How can a clerk in a drive-up window tell whether the person sitting in that car, offering money, is in fact intoxicated or not? You contrast that with the opportunity that a clerk has when a person has to walk into a store, a well-lighted store, walk up to a counter, and pay for alcoholic beverages.

A third example of a law which is difficult to enforce because of these drive-up liquor windows is that most States make it illegal for people to drink while they are driving or to have open containers in the car while it is in operation. Senator DORGAN is proposing an amendment, which I strongly support this morning, on that very issue. But, again, having drive-up windows creates a tremendous opportunity and even an invitation to people to violate this law.

The absurdity of what we are permitting to occur by allowing these drive-up sales to continue is highlighted by a practice that has been documented in my State many times, and that is a practice where a driver pulls into a drive-up window and asks for a fifth of vodka, for example, a fifth of vodka and a cup of ice, and is handed both and drives away. Clearly, no law has been violated in my State when that occurs. But if you look at the time and the place and the circumstances of that purchase, it is very difficult to conclude that that driver does not intend to violate the law and to drink while driving.

This is a problem that deserves our attention. The statistics that we have are clear that there is a correlation between the States that prohibit these drive-up windows and those that have gotten their DWI problem under control. There are 26 States that have not yet banned these windows. In these States, there is a 14 percent higher alcohol-related fatality rate than in other States. In the States that do have a ban, the average DWI fatality-related rate was 4.6 per 100,000 people as opposed to 5.46 in other States. If we look at the 19 Western States, the 9 States with a ban had a 31 percent lower average drunk driving fatality rate than the 10 States that permit sales.

Let me just cite one terrible incident that occurred in my State. I know Senator LAUTENBERG talked about the Frazier family in Maryland and the pain they experienced when their

young daughter was killed by a drunk driver. In New Mexico, we've had many similar occurrences. One in particular that immediately comes to my mind occurred on Christmas Eve, 1992. As part of their holiday celebration, Paul Cravens took his wife Melanie and their three daughters, Kacee, age 5; Erin, age 8; and Kandyce, age 9, to Albuquerque's West Mesa so they could get a better bird's eye view of the city's fantastic nighttime lights. They never got to see those lights. On the way to the Mesa, they were met head-on by a drunk driver traveling 90 miles an hour in the wrong direction on the interstate highway.

People say, is there any kind of Federal concern about this? This was an interstate highway. Melanie and her three beautiful daughters were all killed. The driver of the other vehicle had been drinking through that day. He admitted that he had bought his beer at a drive-up liquor window before he took to the road that evening.

The problem is real. We are talking about real people, real lives, real risks and dangers that we can prevent and can avoid.

The argument about States' rights that we have heard here, to me, rings very hollow. I know there are many circumstances that have already come up where we have recognized the need to restrict the way States handle alcoholic beverages as part of a safe driving system, and clearly those issues can be discussed more as we get through the debate.

I just want to add one other point that I believe is significant here. As I've said before, the problem of DWI and DWI-related injuries and fatalities is important in New Mexico. There is very broad public support to eliminate these windows. When I was in New Mexico two weeks ago, I held a series of seminars with high school students from throughout the state, and I listened to their concerns about the problems in the state and in the country. One young man, Simon Goldfine, who is a student at Del Norte High School in Albuquerque, agreed that the DWI rate in New Mexico is much too high, and one reason he explained is these drive-up windows. Simon explained that if a drunk person has to walk into a liquor store, it will be easier to determine if he is drunk than if he simply sat in his vehicle. And Simon asked if something could be done to eliminate these windows. Today, I would like to tell Simon that we will do something about it. I believe no one in America will disagree with Simon that this ban will make a difference. I believe we owe it to everyone, to the young people like Simon and especially the people who have been touched and pained by this problem of DWI to pass this amendment.

Mr. President, I gather my time has expired. Let me yield the rest of the time to Senator BYRD and thank him for his support of this amendment.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished Senator, the offeror of this amendment, for yielding me time.

I wonder if the distinguished Senator from Rhode Island would assure me of an additional 5 minutes if I need it?

Mr. CHAFEE. Yes. We can assure the Senator of that. We will even take it—by unanimous consent add the time, or else we will take it from the opponents' side, if they do not come prepared to speak.

Mr. BYRD. I trust there will be no interruption of my statement until the 7½ plus the 5 have run their course, Mr. President?

The PRESIDING OFFICER. The Chair will so note.

Mr. BYRD. Mr. President, Senator BINGAMAN has brought to the attention of the Senate a new and deadly twist on the idea of convenience stores. He has discussed the existence in some States of stores that sell alcohol at drive-up windows. That is simply amazing to me, a store that sells alcohol at a drive-up window.

How can we take seriously any campaign to reduce the dangers of drinking and driving, while at the same time allowing sales of alcoholic beverages to people in their cars! It is crazy. I am sure that these drivers will, of course, always, personally, follow the guidelines to ''wait until you get home to drink these alcoholic beverages!'' I am just as sure of that as I am sure that everyone who buys take out food at a drive through window waits until they are safely off the highway before trying to eat a dripping burger or a hot, salty french fry, while simultaneously steering a three thousand pound automobile through traffic!

I applaud the action being taken by my distinguished colleague, Senator BINGAMAN, to ban these alcoholic beverage sales at drive-up windows. There is no reason to take the concept of convenience to this extreme. I have been on the face of this beautiful Earth for a little over 80 years now, and I have seen a lot of new conveniences come into my life, but I can adamantly admit that this is not one that I welcome. I want to be able to enjoy life for many more years, and I do not want the prospect of a long life put into jeopardy so that some boozehound or drunk driver can have great convenience insatiating his or her desire for alcohol without even having to leave the car! There are just some things in this life that should not be easy to obtain—things that should not be so convenient. Easy access to alcohol means easy access to drinking and driving, and that is something to which I am vehemently unalterably opposed.

The existence of this kind of easy-on, easy-off establishment only increases the potential for drunk drivers to purchase alcohol. An intoxicated person, sitting in a car, can easily avoid attracting the attention of the sales person by fiddling with the radio or finding some other type of distraction, thus preventing the sales clerk from noticing that the driver is inebriated, maybe even drunk. Observation of customers for clues to their sobriety, or lack thereof, is much easier if the customer has to park, get out of the car, and walk into the store.

My strong opposition to establishments which offer drive-up alcohol sales is not only limited to my fear of drunk drivers, but also to the potentially illegal sale of alcohol to minors. The pitfalls of youth and inexperience behind the wheel of an automobile are only exacerbated when one throws alcohol into the equation. One question that comes to mind is: How does an employee at this type of alcoholic beverage store adequately make the comparison between a driver's identification and the person sitting in the car presenting that ID? That person is sitting in a car! This potential drunk driver could be 5 foot 10, he could be 5 foot 7 while his or her identification card might identify the person as a six-footer.

Mr. President, I believe that in order to make a sound decision to sell alcohol to a person, the customer should be standing before the sales clerk, presenting the necessary documentation, and showing the essential sober characteristics that are legally required for that person to purchase alcoholic beverages.

I am all in favor of making life more convenient. It is nice to have the liberty of going to a Quik-Mart when you need to purchase a candy bar pick-me-up, or for that gallon of milk that your family needs for breakfast the next day. But, I do not believe in making it more convenient for drunk drivers, potential drunk drivers, or our underage youth or anybody else, for that matter, to purchase alcohol. It is this type of convenience that can make life very inconvenient for the responsible individuals, families, wives, children, our staff people and other travelers who make the conscious decision to ''cruise without booze!'' Allowing this type of alcohol sales establishment is a leap backwards in the campaign against drunk driving.

I fully support Senator BINGAMAN's amendment, and I urge my colleagues to do the same.

I think of an old poem by Joseph Malins. I hope that I can recall it. I think it is very fitting here. It makes the whole point that Senator BINGAMAN's amendment is trying to accomplish:

Twas a dangerous cliff, as they freely confessed,
Though to walk near its crest was so pleasant;
But over its terrible edge there had slipped
A duke and full many a peasant.
So the people said something would have to be done,
But their projects did not at all tally;
Some said, ''Put a fence around the edge of the cliff,''
Some, ''An ambulance down in the valley.''
But the cry for the ambulance carried the day,

For it spread through the neighboring city;
A fence may be useful or not, it is true,
But each heart became brimful of pity
For those who slipped over that dangerous cliff;
And the dwellers in highway and alley
Gave pounds or gave pence, not to put up a fence,
But an ambulance down in the valley.

''For the cliff is all right, if you're careful,'' they said,
''And, if folks even slip and are dropping,
It isn't the slipping that hurts them so much,
As the shock down below when they're stopping.''
So day after day, as these mishaps occurred,
Quick forth would these rescuers sally
To pick up the victims who fell off the cliff,
With their ambulance down in the valley.

Then an old sage remarked: ''It's a marvel to me
That people give far more attention
To repairing results than to stopping the cause,
When they'd much better aim at prevention.
Let us stop at its source all this mischief,'' cried he,
''Come, neighbors and friends, let us rally;
If the cliff we will fence we might almost dispense
With the ambulance down in the valley.''

''Oh, he's a fanatic,'' the others rejoined,
''Dispense with the ambulance? Never!
He'd dispense with all charities, too, if he could;
No! No! We'll support them forever.
Aren't we picking up folks just as fast as they fall?
And shall this man dictate to us? Shall he?
Why should people of sense stop to put up a fence,
While the ambulance works down in the valley?''

But a sensible few, who are practical too,
Will not bear with such nonsense much longer;
They believe that prevention is better than cure,
And their party will soon be the stronger.
Encourage them then, with your purse, voice, and pen,
And while other philanthropists dally,
They will scorn all pretense and put up a stout fence
On the cliff that hangs over the valley.

Better guide well the young than reclaim them when old,
For the voice of true wisdom is calling,
''To rescue the fallen is good, but 'tis best
To prevent other people from falling.''
Better close up the source of temptation and crime
Than deliver from dungeon or galley;
Better put a strong fence round the top of the cliff
Than an ambulance down in the valley.''

I hope my colleagues will vote today to put a strong fence around the edge of the cliff, because that is all that is going to work.

I commend my colleague for his foresight, for his courage, and for his good sense in offering this amendment. I thank, again, the distinguished Senator from Rhode Island.

Mr. CHAFEE. Mr. President, what is the time situation for the opponents and proponents?

The PRESIDING OFFICER. The time for the proponents has expired. The Senator from Rhode Island controls 11 minutes and 30 seconds.

Mr. CHAFEE. I will say to anyone who wishes to oppose this amendment, who wishes to speak in opposition, now is the time to come over to speak. As has been pointed out, there are 11 minutes remaining.

I will make a couple of comments, Mr. President.

Senator BINGAMAN's amendment would withhold 5 percent of a State's highway construction funds, unless the State enacted or enforced a law prohibiting drive-through liquor sales by—it is my understanding the date now has been changed to October 1, 2000; am I correct in that?

Mr. BINGAMAN. Mr. President, we are changing it to 2001, October 1, 2001. I think it will be consistent with the amendment adopted yesterday.

Mr. CHAFEE. Originally, it was 1999, but now it has been changed.

Mr. BINGAMAN. That is correct.

Mr. CHAFEE. Mr. President, I will make that correction, 2001.

Mr. BINGAMAN. Mr. President, I will just add, it is 2001, October 1, 2001, for a 5-percent reduction and October 1, 2002, for a 10-percent reduction, just as the amendment yesterday.

Mr. CHAFEE. Mr. President, like the Senator from New Mexico, I am disturbed by the incidents of alcohol-related injuries and fatalities on our highways, as we all are. I believe the Federal Government should support strong national safety standards for our roads and, indeed, I was a sponsor of the Lautenberg amendment. In our bill, we have provisions dealing with the so-called repeat offender.

I am not sure the Senator's amendment is an appropriate solution to the problem of drunk driving. We cannot expect it to do everything, obviously. I have concerns about how much it will accomplish. It does place, as originally offered—there was a short time period. That has now been extended. Less than 22 of the States have such a law in effect. It will require them to pass this legislation by—the latest figure now is 2001.

I am not sure whether such a sales ban would have an impact on alcohol-related deaths. The National Highway Traffic Safety Administration has no statistical information on the effectiveness of such a sales ban. Indeed, we have not considered this measure at all in our committee.

It is a steep sanction, the 5 and the 10 percent. I think it is one we ought to approach with great caution. I must say, I am a little reluctant to have this bill too filled with sanctions. We have our provision in the bill already; namely, the one dealing with the repeat offender. We have the provision that was adopted in the Lautenberg-DeWine amendment. And then we have another amendment coming up from the Senator from North Dakota, which also has sanctions. I am just reluctant to get in too many sanctions, and the only way they can avoid these sanctions is for the State legislatures to take certain actions by a period, in this instance, by 2001.

I think we are putting a lot on the backs of the State legislatures in a relatively short time. So I have concerns over that, Mr. President.

If anybody wishes to speak in opposition to the amendment, now is the time. If not, I give that time to the proponents. If the Senator from New Mexico wishes to speak, he can take some time.

Mr. BINGAMAN. Mr. President, thank you. I thank the chairman of the committee for his courtesy.

AMENDMENT NO. 1696, AS MODIFIED

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the amendment be modified in accordance with the changes that have been referred to by the Senator from Rhode Island.

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

The amendment, as modified, is as follows:

On page 236, between lines 16 and 17, insert the following:

SEC. 14___. BAN ON SALE OF ALCOHOL THROUGH DRIVE-UP OR DRIVE-THROUGH SALES WINDOWS.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

''§ 154. Ban on sale of alcohol through drive-up or drive-through sales windows

''(a) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

''(1) FISCAL YEAR 2000.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2001, if the State does not meet the requirements of paragraph (3) on that date.

''(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2002, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

''(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law (including a regulation) that bans the sale of alcohol through a drive-up or drive-through sales window.

''(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

''(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

''(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2002.—Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 2002, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

''(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 2002.—No funds withheld under this section from apportionment to any State after September 30, 2002, shall be available for apportionment to the State.

''(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

''(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

''(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

''(B) TREATMENT OF CERTAIN FUNDS.—Sums not obligated at the end of the period referred to in subparagraph (A) shall lapse.

''(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall lapse.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 153 the following:

''154. Ban on sale of alcohol through drive-up or drive-through sales windows.''.

Mr. BINGAMAN. Mr. President, I believe Senator BYRD made the case for the amendment more eloquently than I could.

I believe this is a very good opportunity for us to indicate that we do have an interstate road system in this country and that it is in the national interest to be sure that people are not driving on that interstate road system who have purchased liquor under circumstances that make it more likely for them to be drunk or under the influence of alcohol. Clearly, this is a significant way in which we can further that objective.

I hope very much my colleagues will support the amendment. I yield the floor so that the Senator from North Dakota can offer the amendment that he intends to offer.

Mr. CHAFEE. How much time do we have left, Mr. President?

The PRESIDING OFFICER. The Senator from Rhode Island controls 6 minutes.

Mr. CHAFEE. It does not appear that there is anybody who chooses to come to speak in opposition.

Does the Senator from New Mexico have others who wish to speak?

Mr. BINGAMAN. Mr. President, we do not at this point.

Mr. CHAFEE. Let me just say again, Mr. President, I am concerned about the number of sanctions we would be adding to the States under this. I have grave concern whether we might well have a backlash. We had a very solid vote on stern sanctions involved in the Lautenberg-DeWine amendment. There are sanctions in the underlying bill we have dealing with repeat offenders. There are sanctions in the legislation that the Senator from South Dakota is going to propose immediately. So I am worried that there could well be a backlash in the States and particularly, when we go to conference, that the attitude might be to just dispose of all of these sanctions. So that is the concern that I have.

There being no others who wish to speak, I yield back the remainder of our time and am prepared to go to the Dorgan amendment at this time, unless the Senator from New Mexico has anything further to say.

Mr. BINGAMAN. I think that is an acceptable course of action. Thank you, Mr. President.

Mr. CHAFEE. All right. I will do that, Mr. President. We are prepared now to go to the Dorgan amendment.

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota is recognized to offer an amendment in which there will be 60 minutes of debate equally divided.

The Senator from North Dakota.

AMENDMENT NO. 1697 TO AMENDMENT NO. 1676

(Purpose: To withhold certain Federal highway funds from a State that fails to prohibit open containers of alcoholic beverages and consumption of alcoholic beverages in the passenger area of motor vehicles)

Mr. DORGAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] for himself, Mr. LAUTENBERG, Mr. BUMPERS, Mr. CONRAD, Mr. WELLSTONE, Mr. GLENN, Mr. BINGAMAN, Mr. INOUYE, Mr. TORRICELLI, and Mr. REID, proposes an amendment numbered 1697.

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

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

The amendment is as follows:

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

SEC. 14___. OPEN CONTAINER LAWS.

(a) ESTABLISHMENT.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

''§ 154. Open container requirements

''(a) DEFINITIONS.—In this section:

''(1) ALCOHOLIC BEVERAGE.—The term 'alcoholic beverage' has the meaning given the term in section 158(c).

''(2) MOTOR VEHICLE.—The term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail or rails.

''(3) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term 'open alcoholic beverage container' has the meaning given the term in section 410(i).

''(4) PASSENGER AREA.—The term 'passenger area' shall have the meaning given the term by the Secretary by regulation.

''(b) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

''(1) FISCAL YEAR 2002.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2002, if the State does not have in effect a law described in paragraph (3) on that date.

''(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2002, and on October 1 of each fiscal year thereafter, if the State does not have in effect a law described in paragraph (3) on that date.

''(3) OPEN CONTAINER LAWS.—

''(A) IN GENERAL.—For the purposes of this section, each State shall have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

''(B) MOTOR VEHICLES DESIGNED TO TRANSPORT MANY PASSENGERS.—For the purposes of this section, if a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container in the passenger area by the driver (but not by a passenger) of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or to the living quarters of a house coach or house trailer, the State shall be deemed to have in effect a law described in this subsection with respect to such a motor vehicle for each fiscal year during which the law is in effect.

''(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

''(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

''(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2003.—Any funds withheld under subsection (b) from apportionment to any State on or before September 30, 2003, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

''(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 2003.—No funds withheld under this section from apportionment to any State after September 30, 2003, shall be available for apportionment to the State.

''(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (b) from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State has in effect a law described in subsection (b)(3), the Secretary shall, on the first day on which the State has in effect such a law, apportion to the State the funds withheld under subsection (b) that remain available for apportionment to the State.

''(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

''(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

''(B) TREATMENT OF CERTAIN FUNDS.—Sums not obligated at the end of the period referred to in subparagraph (A) shall—

''(i) lapse; or

''(ii) in the case of funds apportioned under section 104(b)(1)(A), lapse and be made available by the Secretary for projects in accordance with section 118.

''(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (b) from apportionment are available for apportionment to a State under paragraph (1)(A), the State does not have in effect a law described in subsection (b)(3), the funds shall—

''(A) lapse; or

''(B) in the case of funds withheld from apportionment under section 104(b)(1)(A), lapse and be made available by the Secretary for projects in accordance with section 118.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 153 the following:

''154. Open container requirements.''.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I want to apologize. I said the Senator from ''South Dakota,'' and I was wrong. He is very much from North Dakota.

Mr. DORGAN. Well, Mr. President, the Senator from Rhode Island is—it is Rhode Island, isn't it? The Senator from Rhode Island is a very generous friend, and a lot of folks get that ''North'' and ''South'' mixed up. But North Dakota is very distinct from South Dakota. I do not have the time to describe all of the reasons today, but even Lewis and Clark, nearly 200 years ago, understood that difference because they decided, when they had to spend the winter someplace, they would go a little farther north and spend it in North Dakota.

In any event, I have an amendment that I offer today, an amendment that I think is very important. I want to describe it very briefly, and I think others will come to the floor to support this amendment.

Three years ago I offered an amendment nearly identical to this, and I lost by two votes in a vote on the floor of the Senate. I regret that that happened. It is the way the legislative process is—sometimes you win, sometimes you don't; sometimes the vote is close, sometimes it isn't.

I feel very strongly about this amendment for a lot of personal reasons and also very strongly because of policy reasons. The amendment deals with the ability of people in this country to drive down a road in America and drink while they are driving, or if not having the driver drink, having passengers in the vehicle drinking while the driver is driving on.

Most people are surprised to learn that there are five States in America where it is perfectly legal to put one hand around the neck of a whiskey bottle and the other on a steering wheel, start the engine and drive off, and you are violating no laws.

It is very surprising for people to hear that in some parts of the country, when you take your family on a vacation, you may cross a border where in that next State you have someone driving down the road drinking whiskey, drinking beer, and they are perfectly legal.

With all due respect to the States in which that occurs, that ought not be legal anywhere in America. It ought not be legal anywhere, any time or under any conditions in this country. We ought to expect in this country when we drive on our road system—and it is a national road system—no matter where we drive, no matter what city, what county, what township, what State we are driving in, we ought to be able to expect that at the next intersection we are not going to meet a vehicle that has a driver that is drinking legally while he is driving or while she is driving.

We ought not expect that in the 22 other States, where it is not legal for the driver to drink but it is perfectly legal for the rest of the passengers in the car to be having a drinking party, we ought not expect to meet a car in that circumstance either.

My amendment is very simple. It would, as many States have done, provide that all States shall have a prohibition on open containers. Very simple—a prohibition on open containers. This will not apply to vehicles for hire and commercial vehicles and so on. But you would expect then, if this legislation passes, that no matter where you drive in this country, at the next road or intersection or city or county you are not going to meet a vehicle that is full of people drinking, including the driver.

Very simple. It says the States must enact laws that prohibit open containers. Many States do. Most States do. Some States do not. You all must. There is a sanction here. The sanction is designed not to penalize the State. It is designed to say to States, you must pass a prohibition on open containers.

I have described on the floor—and I shall not this morning—the telephone call I received the night my mother was killed by a drunk driver. Every family in this Chamber knows of someone, a close friend, perhaps a relative, an acquaintance who received that telephone call. My colleague from Ohio, regrettably, received that telephone call about his daughter. My colleague from Arkansas received that telephone call. But it is not just us; 17,000 families receive those telephone calls. And 17,000 families received that telephone call last year.

This is not some mysterious illness for which we do not know a cure. We know what causes this and we know how to stop it. We have to decide in this country that drunk driving is serious business and there are several important steps to take to stop it. This legislation, this amendment, is one.

Mr. President, I am proud today that others will join me. The Mothers Against Drunk Driving strongly supports this amendment. The Advocates for Highway Auto Safety has sent to all my colleagues a letter strongly supporting this amendment. Senators LAUTENBERG, BUMPERS, CONRAD, WELLSTONE, GLENN, BINGAMAN, INOUYE, TORRICELLI, and REID are some of the cosponsors of this amendment. I know the chairman of the subcommittee has voted for it in the past.

I now yield 5 minutes to the Senator from Ohio, Senator DEWINE, for a statement on this. I very much appreciate his willingness to come to the floor.

Mr. DEWINE. I thank my colleague from North Dakota for his fine work in this area.

I rise today, Mr. President, to strongly support the amendment. You know, in the past several decades we in this country have made tremendous progress in the war against drunk driving. But we have seen in the last several years a retrenchment in that. Let me cite the statistics that show this.

According to the National Highway Traffic Safety Administration, NHTSA, alcohol-related traffic fatalities dropped from 24,050 in 1986 to 17,274 in 1995. That was a 28 percent decrease in drunk driving tragedies over a decade. I think we, as a nation, can take a lot of pride in this. But, unfortunately, from 1994 to 1995, alcohol-related fatalities rose 4 percent—the first increase in over a decade.

I believe we must now act to reverse this disturbing trend by reinforcing our commitment and the statement that we make through our laws that drinking and driving simply will not be tolerated.

Yesterday, the Senate took the first step in doing just that. We passed an amendment which would make .08 blood alcohol content the law of the land, a law which I believe the statistics clearly show will save between 2,500 and 3,000 lives over the life of the ISTEA reauthorization.

Today, Mr. President, we can take another step in the right direction. Currently, 22 States allow individuals in a car to be drinking while the vehicle is in operation. And even more shockingly—even more shockingly—there are five States where it is perfectly legal for the driver of a car to drink while at the same time operating the motor vehicle.

Mr. President, common sense should tell us that this is not a good idea. We should be in the business of making it more difficult to drink and drive, not encouraging liquor in cars.

Mr. President, this amendment speaks to what message we send through our laws. When we pass drunk-driving-related legislation, our goal is not to have more people arrested, our goal is not to have more people pulled over; our goal is to deter conduct. That has been the effect of drunk driving laws. That is why the fatality level has gone down. That is why lives have been saved, because people have been deterred. We sent messages to ourselves, to the rest of the country, the people, through our laws, what is important and what is not important.

What kind of a message is it when we say it is OK to have open containers of alcohol in a car? In some locations in this country it is OK for a driver to be going down the road, driving with one hand and holding a beer in the other. What kind of a message is that?

So I think what the Dorgan amendment does and its greatest value is as a deterrent effect. It will help get us back on track. We made progress. We have had steady progress for the last 15 or 20 years in reducing the auto fatalities caused by drinking and driving. It has only been in the last several years that that trend has been reversed.

Passage of the Dorgan amendment, while it is a relatively simple amendment—and it might not seem that it is a huge deal—I think it is a big deal because it sends the right message. It says, ''No, it's not OK to have alcohol in a car. It's not OK to be drinking and

driving. And it's not OK to drive down the road with a beer in one hand and your other hand on the wheel of a car.''

I think there are certain minimum standards that should apply whether you are driving in North Dakota or on a highway in Indiana or Kentucky or wherever you take your family. I think we all have, as parents, the right to think that, when we put our family and our loved ones in a car, no matter where we are going on vacation or where we are traveling, there are some minimum standards that will be followed.

One of the minimum standards, it seems to me, that is eminently reasonable and infringes on no one's rights, is a minimum standard that simply says, ''No, you cannot have open containers of alcohol in a car. And, no, you cannot be driving that car and at the same time drinking alcohol.'' It is that simple.

I urge my colleagues to support this very, very modest and very sensible amendment.

I yield the floor and thank the Chair.

Mr. DORGAN. Mr. President, I thank the Senator from Ohio for his support on the amendment. He has been a strong supporter of this kind of legislation. As he indicates, this is not intruding on someone's basic right to do certain things.

I do not believe that most people in this country would say, ''We think it's an inherent right on a national road system for any American citizen to drink and drive at the same time.''

I hope very much that those who I know are concerned about this issue of drunk driving and concerned about the some-17,000 people who are killed, 17,000 fatalities each year as a result of alcohol-related accidents, I hope they will join us.

I know that there are some in this Congress who are sympathetic to this issue but believe very strongly that it is something that belongs to the States. I certainly respect that feeling, except that I believe there are some basic standards that we must assert ourselves on. We have done that, for example, on some safety issues such as standards on roads.

How do you build a road to make sure it is standard? We decide there is a certain standard, so we don't run from one State to another finding roads built without any safety characteristics. We have standards for that.

The same is true with respect to safety relative to drunk driving. All we are saying is that we don't think there ought to be anywhere in this country where people in a vehicle are drinking while they are driving down the road. Or the rest of the folks, four other people in the vehicle, are not passing around a bottle of peppermint schnapps or a bottle of Jack Daniels and a six-pack of beer, having a fine party, while the automobile is being driven down the street. That is not what we should expect on our roads and streets in this country.

Mr. President, as I mentioned, I offered this amendment 3 years ago. I lost by two votes. I then switched my vote so I could have it reconsidered later. I was unable to do so. The record will show it was a four-vote loss, but, in fact, I lost this amendment by two votes. I don't know what the vote will be this morning. I expect it will be very close. I hope those who decided to join yesterday in the .08 national standard will also decide today this modest step, as it is described by Senator DEWINE, and others, this modest step, is one that is a step in the right direction.

I will use just a couple of minutes to describe some statistics about drunk driving. I know others have used some data to describe the amount of drunk driving and the amount of casualties on America's roads because of it. In 1996, the last year for which we have complete data, there were 17,272 alcohol-related fatalities. That is an average of one every half hour. In February of 1995, the U.S. Secretary of Transportation convened a conference in Washington, DC. He did so to discuss future goals for reducing deaths and serious injuries on America's highways due to alcohol-related deaths. That conference was called Partners in Progress. It established a goal of reducing drunk driving deaths to no more than 11,000 per year by 2005. That is a lot of highway deaths but substantially below the current level of some 17,000-plus deaths as a result of alcohol-related accidents. Mr. President, 11,000 is a far cry from where we are.

We must—and I think we have in this Senate—begin to take steps to address the issue and see if we can't meet this goal. One step was yesterday with the .08 standard. The second step, I hope, will be today with a proposition that I offer that says we should not allow, anywhere in this country, people who are driving automobiles to be drinking, and we should not allow open containers of alcohol in vehicles in this country.

The Senator from Ohio said something very important. The drunk driving legislation that we are offering in the Congress is not offered in a design to try to catch people, arrest people and throw people in jail. It is offered as a design to try to encourage people that it is wrong to drink and drive. Don't think about it; don't try it; the penalties are severe. We are not looking to go out and arrest people and throw people in jail. We are looking to change people's behavior and habits.

Mothers Against Drunk Driving, an organization I mentioned earlier, is a remarkable organization. It has done a substantial amount of work in recent years to deal with this issue. Frankly, a substantial amount of progress has been made. State legislatures, Mothers Against Drunk Drivers, and others, have led the way to make some substantial changes. I, today, want to congratulate that organization and commend them for the work they have done. As they indicate in their letter to all Members of Congress, the job is not nearly complete and there are more steps to take, one of which we took yesterday, and one of which I hope we will take this morning. The one I am asking the Congress to take is the simplest of all of these steps and it is to say that when you look at what is happening around this country, State by State, you understand that the job is not done. In too many regions of this country there are people driving their vehicles, drinking while driving, and they are perfectly legal; in too many other States, others are drinking in those vehicles and that, too, is legal.

Mr. President, I notice the Senator from New Mexico has risen. I will reserve the balance of my time if he wishes to assume the floor.

Mr. DOMENICI. Mr. President, I wondered if I might just be permitted to use 3 minutes for three amendments that will be accepted?

Mr. DORGAN. Of course. I certainly agree to that.

Mr. DOMENICI. We won't interrupt in the RECORD anything that you have been doing.

The PRESIDING OFFICER. Who yields time to the Senator from New Mexico?

Mr. CHAFEE. Mr. President, we yield time from the opponent's side.

AMENDMENT NO. 1387, AS MODIFIED

(Purpose: To encourage the Secretary of Transportation to use the national laboratories in carrying out the research and technology program)

Mr. DOMENICI. Mr. President, I am sending to the desk amendment No. 1387, which is currently filed, and I want to send to the desk a modification of that amendment.

The PRESIDING OFFICER. The pending amendment will be set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] for himself and Mr. BINGAMAN, proposes an amendment numbered 1387, as modified.

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

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

The amendment, as modified, is as follows:

Beginning on page 339, strike line 11 and all that follows through page 341, line 16, and insert the following:

''(ii) in cooperation with other Federal departments, agencies, and instrumentalities and multipurpose Federal laboratories; or

''(iii) by making grants to, or entering into contracts, cooperative agreements, and other transactions with, the National Academy of Sciences, the American Association of State Highway and Transportation Officials, any Federal Laboratory, any State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or person.

''(C) TECHNICAL INNOVATION.—The Secretary shall develop and carry out programs to facilitate the application of such products of research and technical innovations as will improve the safety, efficiency, and effectiveness of the transportation system.

''(D) FUNDS.—

''(i) IN GENERAL.—Except as otherwise specifically provided in other sections of this chapter—

''(I) to carry out this subsection, the Secretary shall use—

''(aa) funds made available under section 541 for research, technology, and training; and

''(bb) such funds as may be deposited by any cooperating organization or person in a special account of the Treasury established for this purpose; and

''(II) the funds described in item (aa) shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized.

''(ii) USE OF FUNDS.—The Secretary shall use funds described in clause (i) to develop, administer, communicate, and promote the use of products of research, development, and technology transfer programs under this section.

''(2) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

''(A) IN GENERAL.—To encourage innovative solutions to surface transportation problems and stimulate the deployment of new technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

''(i) non-Federal entities, including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, sole proprietorships, and trade associations that are incorporated or established under the laws of any State; and

''(ii) multipurpose Federal laboratories.

Mr. DOMENICI. Mr. President, I offer this amendment on behalf of Senator BINGAMAN and myself. Senator BINGAMAN's name is on the amendment as an original cosponsor.

This permits research and technology programs within this bill. Under certain circumstances, it permits the Department of Transportation to use Federal laboratories if they have the expertise necessary. This amendment cites certain sections, saying that Federal laboratories can be used in that regard.

I understand Senator CHAFEE has no objections.

Mr. CHAFEE. Mr. President, the Senator is right. We have no objections.

Mr. BAUCUS. The Senator is correct. It seems to be fine.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1387), as modified, was agreed to.

AMENDMENT NO. 1393, AS MODIFIED

(Purpose: To require the Secretary to maximize the involvement of Federal laboratories in carrying out the intelligent transportation system program)

Mr. DOMENICI. I call up amendment No. 1393. I send the modification to the desk and ask it be immediately considered.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] for himself and Mr. BINGAMAN, proposes an amendment numbered 1393, as modified.

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

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

The amendment, as modified, is as follows:

On page 389, line 4, insert ''the Federal laboratories,'' after ''universities,''.

Mr. DOMENICI. Senator BINGAMAN is a cosponsor.

This says the Intelligent Transportation System Program can also be made available to the Federal laboratories if they have sufficient expertise to participate.

Mr. CHAFEE. This amendment is agreeable to this side.

Mr. BAUCUS. This side, as well.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1393), as modified, was agreed to.

AMENDMENT NO. 1698 TO AMENDMENT NO. 1676

(Purpose: To provide a definition for the term Federal laboratory)

Mr. DOMENICI. I send to the desk an amendment and ask it be immediately considered. It is cosponsored also by Senator BINGAMAN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] for himself and Mr. BINGAMAN, proposes an amendment numbered 1698.

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

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

The amendment, as modified, is as follows:

On page 337, after line 6, the chapter analysis for chapter 5 of title 23, United States Code is amended by striking ''501. Definition of Safety.'' and inserting ''501. Definitions''.

On page 338, strike lines 2 through 8, and insert the following:

§501. Definitions

''In this chapter:

''(1) SAFETY.—The term 'safety' includes highway and traffic safety systems, research, and development relating to vehicle, highway, driver, passenger, bicyclist, and pedestrian characteristics, accident investigations, communications, emergency medical care, and transportation of the injured.

''(2) FEDERAL LABORATORY.—The term 'Federal laboratory' includes a government-owned, government-operated laboratory and a government-owned, contractor-operated laboratory.

Mr. DOMENICI. Mr. President, since we are now using the terminology ''Federal laboratories,'' this amendment merely is the definition of Federal laboratories as understood in the U.S. Government. So it is not limited to any particular Department's laboratories but rather Federal laboratories and they are defined in this amendment.

Mr. CHAFEE. Mr. President, this amendment is acceptable to this side.

Mr. BAUCUS. This side, as well.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1698), as modified, was agreed to.

Mr. DOMENICI. I thank the manager and the ranking Democrat.

I yield the floor.

AMENDMENT NO. 1697

Mr. DORGAN. I yield 5 minutes to the Senator from New Jersey, Senator LAUTENBERG.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for up to 5 minutes.

Mr. LAUTENBERG. I thank my friend from North Dakota.

I stand with Senator DORGAN as a cosponsor of his amendment to require States to adopt this so-called ''open container'' law. The law will have the practical effect of prohibiting a very dangerous scenario. Just think, it is currently legal in some States to be driving a car with an open bottle of whiskey alongside, or maybe stuck in the cup holder, just an arm's length away from the driver's lips. A car should not be a bar on wheels.

Mr. President, with the passage of my amendment yesterday, .08, this body cast a vote in favor of drunk driving victims and their families. We can all be proud of that vote. Sixty-two Senators voted to inject a sense of sanity in our drunk driving laws, by defining a person as a drunk driver at .08 BAC. We don't want them to reach that level while they are driving a car.

This amendment, the National Drunk Driving Prevention Act, is another critical amendment. It makes as much sense as the Zero Tolerance Act, passed in 1995, and .08 BAC. We have to do all we can to prevent drunk driving in this country. Isn't it, perhaps, obvious, that the least we should do, nevertheless, is to prevent the act of driving and drinking to be performed at the same time?

We have heard, over the past few days, Mr. President, the extent of the national scourge that drunk driving is in our country. I remind those who can hear us, in 1996, almost 42,000 people were killed in highway crashes. Another 3 million were injured. These crashes cost society $150 billion each and every year. Forty-one percent of all traffic fatalities are alcohol related. That means that in 1996, 17,000 people were killed in alcohol-related crashes. Think of what it means. That year, more people were killed in alcohol-related crashes by a significant measure than those killed by firearms, murdered. That year, more people were killed in alcohol-related crashes than were killed in the worst year of the Vietnam war, a war that tore this country apart. The public was in mourning.

A death at the hands of a drunk driver is just as final as the death at the hand of a gun. Drunk driving deaths are preventable. Acting to stop drunk drivers from driving is sensible and responsible. We have to do more. We cannot rest on past laurels. A vote for the .08 BAC is not the only vote that will reduce drunk driving. Voting for this amendment, authored by the Senator from North Dakota, is just as important.

Remember: When you are in your car, at the wheel, it is a driver's seat; it is not a bar stool.

I commend the Senator from North Dakota for his leadership on this and his commitment to the issue. We have learned over these past few days that drunk driving has touched his family personally. I urge all my colleagues to support this amendment, the National Drunk Driving Prevention Act.

I yield the floor.

Mr. CHAFEE. Mr. President, I say to any who wishes to oppose this amendment, now is the time. We are going to vote at 10:30 on this amendment, followed by the Bingaman amendment. So there is time reserved for opponents. Now is the time to come over and speak. I urge anyone who wishes to oppose this amendment of the Senator from North Dakota to come now.

What is the time situation, Mr. President?

The PRESIDING OFFICER. The Senator from Rhode Island has 25 minutes 30 seconds and the Senator from North Dakota has 8 minutes 15 seconds.

Mr. DORGAN. I yield 5 minutes to Senator TORRICELLI.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for up to 5 minutes.

Mr. TORRICELLI. I am very proud to join the Senator from North Dakota in offering this amendment. In our Federal system, there is always a preference for State and local governments setting standards of health and safety for our citizens. By right, those judgments should be made in those levels of government closest to the people themselves. But there are instances where our State and local governments do not rise to those responsibilities to protect our citizens.

Through the years, as our society changes, so, too, sometimes do the standards. We live in a highly mobile society, where in the course of any day, week, or month, citizens from any State in America can find themselves driving on the highways of another locality, in a different jurisdiction. Every Senator has the right and responsibility to know that in that travel, in the pursuit of commerce or recreation, their citizens are safe to some minimal standard. That, in my judgment, Mr. President, is what motivates the Senator from North Dakota today. It defies logic that in 22 States in this Union it is still legal for a passenger in an automobile on a highway to possess an open container of alcohol. And if that is not difficult enough to understand, it is unbelievable that in five States it is permissible, acceptable, it is legal for a person to have one hand on the steering wheel of a moving automobile and the other hand on a container of alcohol.

Our preference for the States governing these issues cannot blind us to a responsibility to protect thousands of lives of our own citizens. I know that in this institution there are those who will not join with the Senator from North Dakota, but it is instructive that while some may vote against him, few, if any, will rise to debate against him, because the point cannot be defended.

In any year in this country, about 17,000 people are losing their lives to alcohol-related traffic accidents. Drunk driving is the leading cause of death of all citizens in America from the age of 5 to 25. There is an epidemic of death from drunk driving across this country. So if you are persuaded that there is a single reason to oppose this in deference to a State law, I offer to the Senate 17,000 reasons why we have to meet our responsibility to the citizens of all 50 States who want to travel with safety and confidence across our highways.

To those who believe that this kind of legislative effort cannot be successful, the best evidence is that through the years our efforts against drunk driving have dramatically reduced the incidents of drunk driving themselves, except with a single category—hard-core drinkers. The casual drinker who drives has been persuaded to exercise caution and to live within the law. But the numbers for hard-core drinkers are staggering. Every weekday between 10 p.m. and 1:00 a.m., 1 in 13 drivers in this country is drunk. Between 1:00 a.m. and 6 a.m., one in seven is drunk. It is those drivers, driving with alcohol in the automobile, with an open container sometimes in their own hands, that we are trying to prevent.

Mr. President, I can think of no legislation that this Senate will consider in the coming weeks that more dramatically could ease the pain of individual American families and save lives than this legislation offered by Mr. DORGAN. I urge my colleagues to support it.

I yield my time back to the Senator from North Dakota.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from Rhode Island is recognized.

Mr. CHAFEE. Madam President, I rise in support of this amendment offered by my colleague from North Dakota. The terrible problem of drunk driving is certainly, as we all recognize, an issue of national importance. In 1996, more than 17,000 lives were lost on our Nation's highways as a result of alcohol-related collisions. This represents nearly half of all the fatalities that occur on our roads each year.

The laws on how drinking and driving are treated vary from State to State. As mentioned previously, six States allow drivers to operate motor vehicles and drink alcohol at the same time. In over half of the States, even if a driver cannot drink, all the passengers in the vehicle can drink.

Madam President, the sad thing is that drunk driving accidents are completely avoidable. There is not a single reason why the driver sitting behind the wheel of a car should be allowed to consume an alcoholic beverage.

Now, Madam President, this isn't about freedom and States rights; it is about the rights of a driver against other drivers on the road. Shouldn't every individual have a right to travel safely on the highways? There is a lot of discussion here as to, ''Oh, leave it up to each State.'' Well, as we all know, in my State, you can go across the State in an hour and, clearly, you are either in Massachusetts or Connecticut very quickly. And so it is in most of the States. We travel from State to State freely. Very few people stay entirely within the borders of their own State all the time.

So we have a right to know that when we go out of our State, if our State should adopt an amendment like this, we will be safe in the other States likewise. I believe the amendment of the Senator from North Dakota will save lives by keeping alcoholic beverages off the road. This is a workable and fair solution to the problem of open containers and the larger problem of drunk driving.

Now, Madam President, we still have time in opposition to the Senator's amendment. But absent that, I would be glad to yield some of that time to the Senator from North Dakota, or whatever he chooses. We have previously committed to not go to a vote until 10:30. I would like to stick by that commitment, even though it might require some dead time here.

Mr. DORGAN. Madam President, I will certainly yield back if Senator CHAFEE has somebody who wishes to speak in opposition. He has been very generous and courteous. I appreciate that.

Madam President, let me read to the Senate a letter that I just received this morning from the Secretary of Transportation, Rodney Slater. It is dated today.

He writes:

> DEAR SENATOR DORGAN: Earlier this week, President Clinton spoke strongly about the need to reduce the risk of drinking and driving by calling on Congress to lower the legal limit for blood alcohol content to .08 percent. Yesterday, the Senate overwhelmingly agreed by passing the Lautenberg-DeWine amendment. I applaud the Senate for supporting this measure. Today, the Senate has the opportunity to approve another amendment which will help fight drunk driving by voting to prohibit open containers of alcohol in motor vehicles.
>
> In 1996, there were more than 17,000 alcohol-related fatalities in this country. The amendment to be offered by Senators DORGAN, LAUTENBERG, BUMPERS, et al., will further efforts to reduce the terrible loss of life on our highways due to drinking and driving.
>
> I urge the Senate to support adoption of this important highway safety provision.
>
> RODNEY SLATER,
> *Secretary of Transportation.*

Madam President, I indicated a bit ago that this amendment was offered by myself 3 years ago and I lost by two votes. I don't know what the vote is going to be today, but I hope that we will prevail with this amendment.

The Senator from New Jersey noted that no one is speaking in opposition to this amendment, and the reason is quite simple: To oppose this amendment requires someone to come to the

floor of the Senate and say they support someone's right to drink and drive.

To the extent that I support the States' rights to determine that they want laws allowing people to drink and drive, it requires someone to stand up and say: This amendment is wrong because I support the right of people to drink while they are driving.

No one will come to the floor to say they support the right of people to drink while they drive in this country—for good reason. Almost all of us know that it's fundamentally wrong. Alcohol and automobiles don't go together. Alcohol and automobiles together represent, in too many instances, drunk driving and, therefore, murder and mayhem on our highways. There is one more dead every 30 minutes, and two dead during this very short debate. The carnage on our roads must stop and can if we decide as a Senate that there are things we can do in public policy to tell the American people not to even think about drinking and driving.

Yesterday, we passed a measure that provides a uniform .08 standard for blood alcohol content. A 170-pound man would have to drink 4 drinks in 1 hour on an empty stomach to get to .08. This question was asked, and I think it is an important question: Would you like to put your children in an automobile driven by someone who has just had four drinks on an empty stomach in the last hour? Or do you think deep in the pit of your belly that would not be a safe thing to do with your children? I think I know the answer. Every American would answer that question saying, no, that is not where I want to put my children.

I would ask the same question with respect to this amendment. Would anyone like to put their children in the automobile where, on the cup holder next to the driver for ready access as the driver drives, there is a can of beer or a bottle of bourbon, because it is legal to do it in some States? Would anyone want to put their children in the front seat or back seat of that car and think, gee, I feel pretty good about sending my kid on that drive? I don't think so. Would anyone want to put their child in the back seat of a car where, if the driver isn't drinking, all the other three passengers are drinking? I don't think so. I think most of us know the answer to that question. There is no vocal opposition to this amendment on the floor of the Senate, because you can't stand up here in the Senate and say that it makes sense to allow people in America to drink and drive.

There was a little boy named Jesse—actually not so little, but kind of short. He was a wonderful boy with an infectious grin, one of the most well-mannered young people you would ever find in life. He was the son of my cousin in Mandan, ND. Jesse is dead now. Jesse went to a party the night before his high school graduation. Jesse was a good boy, but, unfortunately, he accepted a ride with the wrong person. At the end of that matter, he got into the passenger side of an automobile driven by a young man who was drunk, and about 2 minutes later they were hit by a train. Jesse died.

Jesse was just one of those 17,700 people who become a statistic, but his life was important, he was important, and his death was a tragedy. Everyone here has those stories.

I was in an automobile on the main street of Fargo, ND, one night with my daughter. She was driving, and a drunk hit our car. Fortunately, neither of us was injured. The car was totaled—total damage. And I remember my daughter weeping, sobbing uncontrollably, because we had been involved in this crash, and it was traumatic. But by God's grace, we weren't injured. The fellow who hit us was so incredibly drunk that he could not walk when he got out of the car. All he could do was fall. He was too drunk to walk. Every day, every night, every hour, all across this country, you will hear stories like that. People cause property damage, people are injured, people are killed, and it used to be that drunk driving meant someone would give someone a slap on the arm and a wink and a grin, and say, ''Well, I saw you in your pickup truck driving,'' sort of knowing well, ''Ah, shucks.''

Fortunately, we have moved from that point to a point of better understanding that drunk driving in this country kills people. It is not funny. It is not acceptable. We have done a lot of things to reduce deaths by drunk driving in this country. But we have not yet done enough.

The step we propose today to complement the step the Senate took yesterday is very simple. This amendment is not rocket science; this amendment is painfully simple. It says the following: In our country, as we wage the fight against the carnage on our road from drunk drivers, the simple step that must be taken is to say that no vehicle in this country should be driven by someone who is drinking, and no vehicle in this country should be traveling down America's roads with either the driver or the passengers having open containers of alcohol.

That is so simple and so fundamental, and, yet, I expect will be the product of a rather close vote. And I regret that. Again, I respect everyone's interests, motives and reasons for voting, and, as I said, there are some who believe that the Federal Government has no business intruding into this area. It is the States' business. I say in many areas I agree with that. There are many things that are not the business of the U.S. Senate. They are not the business of the Federal Government. But there are some things that are.

When we designed a national road system, we said the transportation and the free movement across this country on good roads and reliable roads and safe roads is part of that national system. How safe is that movement on roads for someone to load up a car with their children and their spouses and go on a family vacation, and then cross that next line and drive into that next State without much warning and without much thought in the back of your mind that at the next intersection in the next county you might meet someone who is drinking and driving—and it is legal—and that someone who might be drinking alcohol as he or she drives down the road might just miss that green light, turned yellow, then turn red, and come to that intersection and meet your family or meet your neighbor's family? That is what happens in this country. It happened in the last half hour and the half hour before that.

I can't go to a meeting and ask the question of any group of representative people in this country, ''How many of you have been affected by drunk driving? How many of you have a relative, a friend, an acquaintance, how many of you know someone who has been killed by a drunk driver?'' You can't do that without having most of the hands in the room raised. That is the impact drunk driving has on our country.

My amendment, as I indicated, is painfully simple. It does not attempt to say to the States, ''Those of you who do not have open container prohibitions, you are bad States.'' That is not what it says. It just says there is a national purpose and a national interest on this issue, and the national purpose and the national interest is that anyone driving anywhere, anytime in this country should be able to expect that the next vehicle they meet on the road is driven by and is occupied by people who are not drinking alcohol.

Those of us who have visited with law enforcement people, who spend their days and nights on America's roads, have heard the stories of tragedy and horror by the folks we pay to keep the peace and to enforce our laws. I encourage anyone who has doubts about whether this issue is important to take some time and just sit down for a few minutes with the men and women of the police forces of our country and let them tell you what happens on our roads with those who are impaired from drinking. Let them tell you the tragedy that occurs virtually every day in every way on America's roads. Only then, I think, will those whose lives have not been touched by this tragedy understand that this is a national problem. It is not someone else's problem; it is our problem. This is a problem we can do something about, something real, something tangible, and something important.

Madam President, the Senator from Arkansas, Senator BUMPERS, has come to the floor. I remember 3 years ago, when I offered this amendment, as I indicated the other day, I heard one of the most touching speeches I have ever heard on the floor of the Senate. His family has been visited with the awful tragedy of drunk driving as well. I am pleased he has come. I hope he will not

mind if I call on him immediately and ask him to consume as much time as he needs.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Madam President, let me thank first the Senator from North Dakota for his very kind remarks and for yielding to me immediately, because I do have a committee that I need to get back to.

I have come to the floor every time I have had an opportunity for the past 23 years to express my moral and vocal support for legislation that has any potential for curbing drunken driving.

I grew up in a devout Methodist household where, in a small town, drinking was absolutely forbidden. Everybody in town knew who drank. We didn't have anything but Presbyterians, Catholics, Methodists, and Baptists. The Catholics drank wine. We could not have wine at communion in the Methodist Church because the Methodist Church was adamantly opposed to any alcoholic beverage. So we drank grape juice at communion. But my mother, considering the fact, as I have said many times on this floor, that I grew up in a household where we were taught that when we died we were going to Franklin Roosevelt. My mother and my father thought he was the greatest man who ever lived. But my mother could not abide Eleanor Roosevelt because she had been accused—I am not sure, according to Doris Kearns' book, ''No Ordinary Time,'' what the real circumstances were. But, anyway, it was a widely held belief in this country that Eleanor Roosevelt had told young women how not to drink too much, which was, if you drink, you only have one drink, or drink in moderation. That was more than my mother could abide. She detested Eleanor Roosevelt until her dying day.

The interesting thing about growing up poor in the South in those days was, as I say, most people couldn't afford to drink, even if they wanted to. But my mother and father, until the day they died, never—either one—tasted alcohol in any form.

So it was on March 22nd. I was a freshman law student at Northwestern University in Chicago. One Sunday evening somebody came in—there was a telephone booth down the hall in the dormitory—and said, ''Dale, somebody wants to talk to you. It is long distance.'' I went down. My sister's brother-in-law was on the phone saying my mother and father had been in an accident and he thought I should come home. He described it for me, and still it didn't really sink in. But, in any event, that was about 7 or 8 o'clock in the evening. I made arrangements to fly home the next morning. That was back when air traffic was almost nonexistent.

But the sum and substance of the story, Madam President, was my mother and father and another couple had been out on a Sunday evening jaunt and had gone over to Oklahoma to look at the spinach crop on some land that my father owned. They were returning about dusk on a narrow, two-lane highway where I–40 runs today.

So this drunk comes roaring over, sliding into my father's side of the road. And that is the end of the story. The woman, who was a friend, was killed instantly. My mother and father were taken to the hospital in Fort Smith, where my mother died 2 days later and my father died 6 days later.

The interesting thing about that whole thing is—you can think of all kinds of interesting sidelights to a story like that—that the man who hit them had been run out of town in a small town. I believe it was Danville, AR. The sheriff told him to get out of town. He was drunk. So I don't know where he was heading. Some people said he was heading for California. And the State Police picked him up on the way. They didn't pick him up. They saw that he was drunk. The State trooper started chasing him, had a flat, and had to give up the chase.

So here was a family as close as any family could be. Interestingly, my brother was himself in law school at Harvard. I believe he was a classmate of Senator CHAFEE. He was a sophomore at Harvard Law School. They didn't have semesters like they did at Northwestern. This was in March. Of course, he had to drop out of school. We both dropped out of school because we were so devastated. He lost the whole year and had to go back and take the whole year over because he was not there for final exams.

I am taking up too much time, I see. I just want to say that ever since that tragedy happened in my household, I have done everything I could do, both here and as Governor of my State, to make sure other families were not devastated in such a way. I had always been opposed to the death penalty before that happened, and I had a tough time after that reconciling my position. I came down on the side of the death penalty later on because I couldn't make much of a distinction between a drunk driver killing my father and mother than I could if he had done it with a gun.

When I have a chance to vote for an amendment like Senator DORGAN's, it is a pleasure. I compliment him for doing something that may—just may; no, it will—keep a lot of families from enduring the agonies that this close family, as close knit as any family ever, endured being totally destroyed in the blinking of an eye because of a roaring drunk.

I am pleased that the Senator from North Dakota has asked me to come over and speak on it. It is my honor.

I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the majority leader.

Mr. LOTT. Mr. President, I believe we have scheduled two more votes at approximately 10:30. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LOTT. Mr. President, I would like to use leader time just to make reference to the Budget Office report. I will use my leader time to make some brief remarks. I believe Senator DOMENICI, chairman of the Budget Committee, will want to respond also.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

THE PRESIDENT'S BUDGET

Mr. LOTT. Mr. President, yesterday the Congressional Budget Office delivered its preliminary report on the President's budget proposal. The news is both astonishing and disappointing. It raises the most serious questions about the President's credibility when dealing with the budget.

Five weeks ago, in his State of the Union address, the President made a promise to the American people. I want to quote from his speech. The President asked and answered a very important question. He said:

> What should we do with this projected surplus? I have a simple, four-word answer: Save Social Security first.

I thought to myself, that sounded like a pretty good idea. But that's not what the President's budget does. The President's budget spends $43 billion of the projected future surpluses.

I invite my colleagues to look at the CBO report. It is right on page 1 of that report:

> The policies outlined in the President's budget will decrease the surplus in each year from 1999 through 2003.

While the President says he wants to save Social Security first, instead, his budget spends the surplus first. Mr. President, what ever happened to preserving 100 percent of the surplus for this purpose? To me, 100 percent means reserving all of it, not all of it except $43 billion that you want to spend. What happened to saving ''every penny of any surplus until we have taken all the necessary measures to strengthen Social Security?'' Does every penny mean every penny except $43 billion?

There is some other bad news in this report as well. I will let the chairman of the Budget Committee provide more detail, but I want to give just two highlights. The President's budget spends so much money that it goes into the red in the year 2000. That's right, after all of our hard work last year to balance the budget, and with a lot of help from a growing, booming economy, the President now proposes to send us back into deficits again that soon. If you are following along in the CBO report, that, too, is on page 1 as well. We have not gotten into the rest of it. That is really a depressing thought to me. It took us almost 30 years to get big Government on the wagon, so to speak, and now the President wants us to steer back to the saloon for one more round of spending.

There is one more point that means a lot to people around here. A critical part of last year's bipartisan budget agreement, which the Speaker and I forged with the cooperation of Democrats and the President, was the creation of caps on discretionary spending. CBO tells us that the President's budget will break those caps by $68 billion over the next 5 years. What good is a budget agreement if the President immediately proposes to violate it? What good is balancing the budget if the President proposes to spend his way back into deficit? And, most important, what good is it to promise that you are going to save Social Security first, when the budget you propose redirects $43 billion of that goal? The President sent us a budget 6 days after his promise to save Social Security first. It took only 6 days for that to fall by the wayside. I have to ask the question, what's next, Mr. President?

I yield the floor and I yield 3 minutes of my leader time to the chairman of the Budget Committee.

Mr. DOMENICI. I will not add much. I ask unanimous consent the preliminary report in its entirety—it's not very long—be printed in the RECORD.

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

[From the Congressional Budget Office, Mar. 4, 1998]

AN ANALYSIS OF THE PRESIDENT'S BUDGETARY PROPOSALS FOR FISCAL YEAR 1999—PRELIMINARY REPORT

As requested by the Senate Committee on Appropriations, the Congressional Budget Office (CBO) has estimated the effects of the President's budget proposals for fiscal year 1999 using its own economic and technical assumptions. CBO estimates that the President's policies will reduce projected baseline surpluses by $43 billion between 1999 and 2003—and will temporarily dip the budget back into red ink by a small amount in 2000. Nonetheless, the overall picture is one of continuing surpluses through 2003.

Yet the good news embodied in the projections by both CBO and the Office of Management and Budget could easily be reversed. If revenue growth this year is just one-half of one percent lower than expected the budget could remain in deficit. Alternatively, continued robust economic growth could push up estimated surpluses. In any case, deficits or surpluses over the next several years that differ from current projections by upwards of $100 billion are entirely possible.

THE PRESIDENT'S BUDGETARY POLICIES

CBO estimates that, compared with its baseline projections, the policies outlined in the President's budget will decrease the surplus in each year from 1999 through 2003. CBO also expects that surpluses under those policies will actually turn out to be lower than projected by the Administration. Nevertheless, the President's budget is estimated to produce a $42 billion surplus in 2003.

CBO's Estimates of the President's Policy Proposals

The President's plan would reduce the surpluses projected by CBO under current policies by $43 billion over the 1999–2003 period (see Table 1). In 1998, though, the President's proposals would increase the surplus by nearly $1 billion.

The President's budget was designed to offset increases in spending for some programs with increases in revenues and decreases in spending for other programs. However, CBO estimates that net increases in spending will exceed additional revenues by between $5 billion and $16 billion a year.

Under the President's proposals, total revenues would exceed the CBO baseline by $12 billion in 1999 and $18 billion by 2003. The budget proposes about $24 billion in cumulative tax reductions through 2003 (such as an increase in the child and dependent care tax credit), which are offset by revenue increases of $26 billion (for example, repealing the ability of certain multinational firms to expand their use of foreign tax credits and thereby decrease their federal tax payments). The net boost in revenues stems mostly from assumed new revenues from tobacco companies totaling $65 billion through 2003. The budget, however, does not specify the policies that might be implemented to raise that $65 billion. Because there are a number of ways to achieve that end, the Joint Committee on Taxation, which estimates the effects of proposed changes to the tax code, simply accepted the Administration's totals.

CBO estimates that the increases in spending proposed in the President's budget will outstrip the revenues intended to covert the new programs. In particular, CBO estimates that discretionary spending proposed by the President will increase outlays above CBO's baseline by $90 billion from 1999 through 2003, and proposals related to mandatory programs will boost outlays by $28 billion over the same period. In total, the President's proposals would increase spending by $118 billion over five years (not including additional debt-service costs).

Under the President's policies, discretionary outlays would rise from $558 billion in 1998 to $573 billion in 1999—$12 billion above the statutory caps on such spending (see Table 2). Such spending would continue to grow in the President's budget, reaching $598 billion in 2003. Total revenues and outlays would each be around $2 trillion by 2003, representing about 19 percent of gross domestic product (GDP).

Among the Administration's initiatives for mandatory spending are proposals to allow certain groups of people who do not currently have access to employer- or government-sponsored health insurance to purchase Medicare coverage. Although CBO makes somewhat different assumptions about participation rates and costs per person than the Administration does, it generally concurs with the Administration's estimate that the provisions would have a small net budgetary impact. Net costs to the federal government would be held down by the high cost of the specified premiums and the stringency of the eligibility criteria, both of which severely limit the number of people who are likely to take advantage of the proposals.

Although the hike in net spending resulting from the President's proposals reduces projected baseline surpluses, the budget is still expected to remain essentially in surplus through 2003 under the President's policies. From an expected level of $8 billion in 1998; the surplus is projected to rise to $51 billion in 2002 before falling in 2003.

CBO's Estimate Compared with Those of the Administration

Although the pattern in the bottom line suggested by CBO's analysis of the President's budget is roughly similar to that estimated by the Administration, the surpluses that CBO projects are smaller. In addition, CBO estimates a small deficit in 2002. The Administration had projected that by 2003 the surplus would reach $83 billion, whereas CBO's estimate of the surplus in that year is about half that size (see Table 3).

Variations between CBO and the Administration in estimating the deficit or surplus arise from baseline differences as well as differences in estimates of the effect of the President's policy proposals. In 1999 and 2000, variations in policy estimates are larger; however, from 2001 through 2003, baseline differences account for the major share of the discrepancy in the two projections.

Baseline Differences. The greatest differences between the two sets of current-policy projections are on the outlay side. The largest of those differences is in estimates of Medicare spending. The Administration expects that total outlays for Medicare over the next six years (including premiums paid to the government by Medicare beneficiaries) will be $50 billion lower than CBO projects, largely because the Administration believes that policies enacted in last year's Balanced Budget Act will produce more savings than CBO had estimated. Indeed, Medicare alone accounts for around half of each year's difference in projected baseline outlays.

In addition, higher projections by CBO of inflation compared with those of the Administration push up estimates of spending for programs affected by cost-of-living increases (such as Social Security and Civil Service Retirement). Moreover, higher estimated unemployment and interest rates boost spending on unemployment insurance and net interest on the public debt, respectively. Overall, though, the Administration's assumptions about the performance of the economy over the next six years are not very different from CBO's (see Table 4).

In 1998, CBO's estimate of revenues is significantly higher than that of the Administration, mostly as a result of technical estimating differences. From 1999 through 2003, however, differences between CBO's and the Administration's revenue estimates under current policies are relatively small.

Differences in Policy Estimates. Almost all of the differences in policy estimates relate to the outlay side of the budget—and mostly to discretionary spending. CBO estimates that annual outlays for defense spending and subsidized housing, among other discretionary programs, will be higher under the President's proposed levels of funding than the Administration has estimated.

The major difference in mandatory outlays comes from the savings produced by repealing the recent ruling of the Department of Veterans Affairs that nicotine dependence can be considered a service-related disease for purposes of compensation. The Administration estimates that costs over the 1999–2003 period will be $7 billion higher than CBO projects under current policies and therefore claims $7 billion more in savings from repealing the decision.

CBO'S REVISED BASELINE

In the course of preparing its annual analysis of the President's budget, CBO typically updates its baseline projections to take account of new information from the President's budget and other sources. The revised March projections then usually become the baseline for the budget resolution.

CBO's new March projections are not materially different from those issued in its January 1998 report, The Economic and Budget Outlook: Fiscal Years 1999–2008. The only major change since January is an increase in revenues from 1998 through 2000 to reflect more rapid inflows into the Treasury than either CBO or the Administration had anticipated (see Table 5). That change, however, is enough to shift CBO's projections from small annual deficits to small annual surpluses during those years. CBO expects that the budget surplus for this year will be nearly $8 billion. Assuming that current policies do

not change and that the economy stays on the anticipated course, surpluses are projected to rise eventually to $138 billion in 2008.

Both federal spending and revenues are expected to total around $1.7 trillion this year—or approximately 20 percent of GDP. Under CBO's baseline assumptions, projected outlays as a percentage of GDP fall gradually to 18.3 percent by 2008. Revenues decline to 19.3 percent of GDP by 2003 and remain at that level through 2008 (see Table 6).

TABLE 1.—CBO ESTIMATES OF THE EFFECT ON THE SURPLUS OR DEFICIT OF THE PRESIDENT'S BUDGETARY POLICIES

[By fiscal year, in billions of dollars]

	1998	1999	2000	2001	2002	2003	Total 1999–2003
CBO Surplus Projections	8	9	1	13	67	53	NA
Effect on the Surplus of the President's Budgetary Policies							
Revenues:							
Tobacco-related	0	10	12	13	15	16	65
Other	(a)	2	3	3	3	2	14
Subtotal	(a)	12	15	17	18	18	80
Outlays:							
Discretionary	(a)	−12	−15	−15	−27	−22	−90
Mandatory:							
Tobacco-related activities	0	−3	−4	−5	−5	−5	−22
Reduce class size in schools	0	(a)	−1	−1	−1	−2	−5
Repeal VA smoking decision	0	(a)	1	2	3	4	10
Other	1	−2	−2	−3	−2	−2	−10
Subtotal	1	−5	−6	−6	−6	−5	−28
Total Outlays	1	−17	−20	−21	−32	−27	−118
Total Effect of Policies	1	−5	−5	−4	−14	−9	−38
Debt Service	(a)	(a)	(a)	−1	−1	−2	−4
Total Effect on the Surplus	1	−5	−6	−5	−16	−11	−43
Surplus or Deficit (−) Under the President's Budgetary Policies as Estimated by CBO	8	4	−5	8	51	42	NA

[a] Less than $500 million.

Notes: Numbers in the table may not add to totals because of rounding. VA=Department of Veterans Affairs; NA=not applicable.

Sources: Congressional Budget Office; Joint Committee on Taxation.

TABLE 2.—CBO ESTIMATES OF THE PRESIDENT'S BUDGETARY POLICIES

[By fiscal year]

	1998	1999	2000	2001	2002	2003
	In Billions of Dollars					
Revenues	1,680	1,751	1,799	1,863	1,948	2,026
Outlays:						
Discretionary:						
Defense	269	270	273	272	280	290
Nondefense	288	303	306	307	307	308
Subtotal	558	573	580	579	587	598
Mandatory:						
Social Security	376	392	409	428	449	471
Medicare	197	208	219	240	246	271
Medicaid	101	108	115	122	131	141
Other	277	301	325	342	357	374
Subtotal	951	1,009	1,067	1,132	1,183	1,257
Offsetting Receipts	−82	−83	−87	−92	−105	−98
Net Interest	245	247	243	237	231	227
Total	1,671	1,747	1,803	1,855	1,897	1,983
Surplus or Deficit (−)	8	4	−5	8	51	42
	As a Percentage of Gross Domestic Product					
Revenues	20.1	20.1	19.8	19.6	19.6	19.5
Outlays:						
Discretionary:						
Defense	3.2	3.1	3.0	2.9	2.8	2.8
Nondefense	3.4	3.5	3.4	3.2	3.1	3.0
Subtotal	6.7	6.6	6.4	6.1	5.9	5.7
Mandatory:						
Social Security	4.5	4.5	4.5	4.5	4.5	4.5
Medicare	2.4	2.4	2.4	2.5	2.5	2.6
Medicaid	1.2	1.2	1.3	1.3	1.3	1.4
Other	3.3	3.5	3.6	3.6	3.6	3.6
Subtotal	11.4	11.6	11.7	11.9	11.9	12.1
Offsetting Receipts	−1.0	−1.0	−1.0	−1.0	−1.1	−0.9
Net Interest	2.9	2.8	2.7	2.5	2.3	2.3
Total	20.0	20.0	19.8	19.5	19.1	19.1
Surplus or Deficit (−)	0.1	(a)	(a)	0.1	0.5	0.4
Memorandum: Gross Domestic Product	8,369	8,729	9.097	9,499	9,933	10,405

(a) Less than 0.05 percent.

Source: Congressional Budget Office.

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

TABLE 3.—CBO REESTIMATES OF THE PRESIDENT'S BUDGETARY POLICIES

[By fiscal year, in billions of dollars]

	1998	1999	2000	2001	2002	2003
Deficit (−) or Surplus Under the President's Budgetary Policies as Estimated by the Administration	−10	10	9	28	90	83
Baseline Differences						
Revenues	22	9	5	1	−1	−2
Outlays:						
Discretionary	5	(a)	−1	−1	−1	2
Mandatory	−1	6	9	16	23	31
Subtotal	4	6	9	15	23	34
Total Baseline Differences	18	3	−4	−15	−24	−36
Differences in Estimates of Proposed Policies						
Revenues	(a)	−1	(a)	(a)	−1	−1
Outlays:						
Discretionary	(a)	7	7	4	11	(a)
Mandatory	−1	1	3	1	4	4
Subtotal	−1	8	10	6	15	4
Total Policy Differences	1	−9	−9	−6	−15	−5
All Estimating Differences						
Total Differences	18	−6	−13	−20	−39	−41
Deficit (−) or Surplus Under the President's Budgetary Policies as Estimated by CBO	8	4	−5	8	51	42

(a) Less than $500 million.
Note: Numbers in the table may not add to totals because of rounding.
Source: Congressional Budget Office.

TABLE 4.—COMPARISON OF CBO AND ADMINISTRATION ECONOMIC PROJECTIONS, CALENDAR YEARS 1998–2003

	Forecast		Projected			
	1998	1999	2000	2001	2002	2003
Nominal GDP:			In billions of dollars			
CBO	8,461	8,818	9,195	9,605	10,046	10,529
Administration	8,430	8,772	9,142	9,547	9,993	10,454
Nominal GDP:			Percentage change			
CBO	4.7	4.2	4.3	4.5	4.6	4.8
Administration	4.3	4.1	4.2	4.4	4.7	4.6
Real GDP:						
CBO	2.7	2.0	1.9	2.0	2.1	2.3
Administration	2.4	2.0	2.0	2.2	2.4	2.4
Implicit GDP Deflator: [a]						
CBO	2.0	2.2	2.3	2.4	2.4	2.5
Administration	1.9	2.0	2.2	2.2	2.2	2.2
Consumer Price Index: [b]						
CBO	2.2	2.5	2.7	2.8	2.8	2.8
Administration	2.1	2.2	2.3	2.3	2.3	2.3
Unemployment Rate:			Percent			
CBO	4.8	5.1	5.4	5.6	5.8	5.9
Administration	4.9	5.1	5.3	5.4	5.4	5.4
Three-Month Treasury:			Bill Rate (Percent)			
CBO	5.3	5.2	4.8	4.7	4.7	4.7
Administration	5.0	4.9	4.8	4.7	4.7	4.7
Ten-Year Treasury:			Note Rate (Percent)			
CBO	6.0	6.1	6.0	5.9	5.9	5.9
Administration	5.9	5.8	5.8	5.7	5.7	5.7
Taxable Income: [c]			In billions of dollars			
CBO	6,688	6,906	7,147	7,426	7,732	8,080
Administration	6,670	6,920	7,188	7,474	7,798	8,132

[a] The ratio of nominal GDP to real GDP.
[b] The consumer price index for all urban consumers.
[c] Taxable personal income plus corporate profits before tax.

Note: Percentage change is year over year.
Sources: Congressional Budget Office; Office of Management and Budget.

TABLE 5.—CHANGES IN CBO BASELINE DEFICITS OR SURPLUSES SINCE JANUARY 1998

[By fiscal year, in billions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
January 1998 Baseline Deficit (−) or Surplus	−5	−2	−3	14	69	54	71	75	115	129	138
Technical Changes:											
Revenues	15	10	5	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)
Outlays:											
Discretionary	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)
Mandatory	(a)	(a)	1	2	4	1	2	1	(a)	(a)	(a)
Net interest	1	(a)	−1	−1	−1	−1	−1	(a)	(a)	(a)	(a)
Subtotal	2	−1	(a)	1	3	1	1	1	(a)	(a)	(a)
Total Technical Changes	13	11	5	−1	−3	−1	−1	−1	(a)	(a)	(a)
March 1998 Baseline Surplus	8	9	1	13	67	53	70	75	115	130	138

[a] Less than $500 million.
Note: Numbers in the table may not add to totals because of rounding.
Source: Congressional Budget Office.

TABLE 6.—CBO REVISED BASELINE PROJECTIONS

[By fiscal year]

	Actual 1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Revenues:						In Billions of Dollars						
Individual income	737	783	792	810	840	886	922	974	1,027	1,083	1,143	1,207
Corporate income	182	197	200	200	200	203	209	216	224	232	241	250
Social insurance	539	573	600	625	651	679	710	743	781	817	856	892
Other	120	127	147	149	155	161	167	173	177	181	187	191
Total	1,579	1,680	1,738	1,784	1,847	1,930	2,008	2,105	2,208	2,314	2,426	2,540
Outlays:												
Discretionary [a]	548	558	561	565	564	560	576	592	609	626	643	661
Mandatory:												
Social Security	362	376	391	409	428	449	471	495	522	551	582	614

TABLE 6.—CBO REVISED BASELINE PROJECTIONS—Continued

[By fiscal year]

	Actual 1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Medicare	208	218	231	244	268	277	306	330	367	377	417	448
Medicaid	96	101	108	115	123	131	141	152	165	179	194	210
Other	231	257	273	293	305	319	332	344	362	370	378	399
Subtotal	896	951	1,004	1,060	1,123	1,176	1,250	1,322	1,417	1,477	1,570	1,672
Net interest	244	245	247	243	237	230	226	221	215	209	202	194
Offsetting receipts	−87	−82	−82	−85	−91	−103	−97	−101	−107	−113	−119	−126
Total	1,601	1,672	1,730	1,782	1,833	1,863	1,954	2,035	2,134	2,199	2,297	2,402
Deficit (−) or Surplus	−22	8	9	1	13	67	53	70	75	115	130	138
Memorandum:												
On-budget Deficit (−) or Surplus	−103	−92	−104	−121	−117	−72	−94	−88	−96	−64	−59	−59
Debt Held by the Public	3,771	3,774	3,781	3,793	3,795	3,743	3,706	3,651	3,591	3,491	3,375	3,251
Revenues:	As a Percentage of Gross Domestic Product											
Individual income	9.3	9.4	9.1	8.9	8.8	8.9	8.9	8.9	9.0	9.0	9.1	9.2
Corporate income	2.3	2.4	2.3	2.2	2.1	2.0	2.0	2.0	2.0	1.9	1.9	1.9
Social insurance	6.8	6.8	6.9	6.9	6.9	6.8	6.8	6.8	6.8	6.8	6.8	6.8
Other	1.5	1.5	1.7	1.6	1.6	1.6	1.6	1.6	1.5	1.5	1.5	1.5
Total	19.8	20.1	19.9	19.6	19.4	19.4	19.3	19.3	19.3	19.3	19.3	19.3
Outlays:												
Discretionary[a]	6.9	6.7	6.4	6.2	5.9	5.6	5.5	5.4	5.3	5.2	5.1	5.0
Mandatory:												
Social Security	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.6	4.6	4.6	4.7
Medicare	2.6	2.6	2.6	2.7	2.8	2.8	2.9	3.0	3.2	3.1	3.3	3.4
Medicaid	1.2	1.2	1.2	1.3	1.3	1.3	1.4	1.4	1.4	1.5	1.5	1.6
Other	2.9	3.1	3.1	3.2	3.2	3.2	3.2	3.2	3.2	3.1	3.0	3.0
Subtotal	11.2	11.4	11.5	11.7	11.8	11.8	12.0	12.1	12.4	12.3	12.5	12.7
Net interest	3.1	2.9	2.8	2.7	2.5	2.3	2.2	2.0	1.9	1.7	1.6	1.5
Offsetting receipts	−1.1	−1.0	−0.9	−0.9	−1.0	−1.0	−0.9	−0.9	−0.9	−0.9	−0.9	−1.0
Total	20.1	20.0	19.8	19.6	19.3	18.8	18.8	18.7	18.7	18.4	18.3	18.3
Deficit (−) or Surplus	−0.3	0.1	0.1	[b]	0.1	0.7	0.5	0.6	0.7	1.0	1.0	1.1
Memorandum:												
On-budget Deficit (−) or Surplus	−1.3	−1.1	−1.2	−1.3	−1.2	−0.7	−0.9	−0.8	−0.8	−0.5	−0.5	−0.5
Debt Held by the Public	47.3	45.1	43.3	41.7	39.9	37.7	35.6	33.5	31.4	29.2	26.9	24.8

[a] The baseline assumes that discretionary spending will equal the statutory caps on discretionary spending in 1999 through 2002 and will increase at the rate of inflation in succeeding years.
[b] Less than 0.05 percent.

Note: Numbers in the table may not add to totals because of rounding.
Source: Congressional Budget Office.

Mr. DOMENICI. Mr. President, yesterday, the Congressional Budget Office released its preliminary analysis of the President's fiscal year 1999 Budget.

Very briefly, according to the CBO analysis, the President's budget proposal would spend $43 billion of the federal surplus rather than save the money for social security as the President admonished us in his State of the Union Address.

This results from the fact that the CBO analysts found that his new proposed spending of nearly $120 billion over the next 5 years exceeds his proposed spending cuts and tax increases of $43 billion.

In other words, if Congress did nothing but abide by the agreement we reached last year, the surpluses projected by CBO would be $43 billion higher than if we adopted the President's budget proposal.

But that won't even be possible, because under the Budget Act, the President's budget could not even be considered on the floor of the Senate, because it would be out of order.

The President's budget violates the agreement reached last year by proposing to break the statutory spending caps by $68 billion, making it out of order in the U.S. Senate.

Further, CBO found that the President's budget dips us back into deficit in the year 2000.

This is disappointing. But even if the administration proposes to break our agreement from last year, I do not.

It is my intent to have the Senate Budget Committee report within the next two weeks a budget for fiscal year 1999 that will: (1) abide by the spending caps set in law last year, (2) balance the budget and keep it in balance, (3) hold any budget surpluses in reserve to protect Social Security and provide for any future transition to a modernized system.

Mr. President, let me make it very simple in this regard. If we did nothing, in other words if the President had not submitted a budget and we just said let's continue with the policies that we have that were established in this bipartisan agreement, the Congressional Budget Office says the surplus would be $43 billion bigger than it is. That is the simple fact which causes them to conclude, and us to concur, that in fact the President has spent $43 billion of the surplus in his budget. It would be $43 billion higher had he not put a budget before the people, which leads you to that one simple conclusion.

Some may recall when the President announced his budget, there was a lot less noise made about it, excepting some profound questions were asked. How can you have $120 billion in new programs and not break the agreed-upon caps—that is the total amount you can spend for domestic discretionary spending—when that cap is a fixed dollar number? It has nothing to do with inflation; it is just a fixed dollar number. How can you say we will spend $120 billion, more or less, more than we had planned yet we will not exceed those agreed-upon totals?

So, what we have now, in my opinion, is a President's budget that, if it were submitted on the floor or in the Budget Committee, would be out of order because it breaches the agreed-upon caps by $68 billion. So it seems to me that we have to go into our mark-up here with that in mind. I am sure the President and his people will explain that they thought certain things could be handled differently than CBO handled them, and they are entitled to that position. But that is what we have to follow, and their rules have to be followed by us. We cannot adopt rules that the President establishes. So I believe it is important that the Senators understand the situation we are confronted with as we move in the Budget Committee and on the floor of the Senate.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

ORDER OF PROCEDURE

Mr. CHAFEE. Mr. President, we are going to vote now. We were scheduled to vote at 10:30. I would like to stick with that if I could. I just don't want this to get into a budget discussion here on the floor of the Senate at this particular time as we are trying to dispose of this legislation.

I do not like to cut off the Senator——

Mr. CONRAD. I ask the Senator from Rhode Island, since the other side has raised the issue, the leader has given

me authority to take 3 minutes of leader time to respond, and I think just in fairness we ought to be permitted to do that.

Mr. CHAFEE. Well, if you want 3 minutes, go to it. But, please, no more than that because we are anxious. We did promise the Senator from New Mexico we would deal with three quick amendments by unanimous consent that we can dispose of very, very quickly, and then I do want to go to these votes. Senators have made an effort to be over here. Why do you not proceed for 3 minutes, then we'll do the Bingaman amendments quickly, and then go to the vote—which should not be more than 5 minutes from now.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

THE CREDIBILITY OF THE PRESIDENT ON THE BUDGET

Mr. CONRAD. Mr. President, questions have been raised about the credibility of this President on the budget. If anybody in this town has credibility on the budget, it is this President. When he came to office, the deficit was $290 billion, and under the plan that was passed in 1993, the deficit is now down, on a unified basis, to zero or very close to that. That has been a dramatic improvement and a dramatic record of deficit reduction by this President.

Now they raise questions about a new CBO score of the President's budget. The President did not have that available to him when he submitted his budget. He submitted his budget based on the Office of Management and Budget projections. By the way, both OMB and CBO have been overly conservative with respect to their projections. Neither of them have been close to right in projecting the dramatic decline in the deficit. The President used the numbers in his budget that were available to him at the time he submitted his budget, and his budget projections have proved to be far more accurate in terms of deficit reduction than some others.

So I just say with respect to credibility on the budget, this President has a demonstrated record. He has done the heavy lifting. He has gotten the results that have put this country in such a strong position.

Now we have a question of a difference of projections. Both of the projections of OMB and CBO have been off the mark. They have underestimated what a good job we have done in reducing the deficit. So when the President's credibility is called into question, I think in fairness we ought to say he based his budget on the projections that were available to him at the time he submitted his budget and he has a record and the record stands clearly as one that has produced the most dramatic deficit reduction we have ever seen.

I hope when we start talking about people's credibility, we do not do it in a loose fashion on the floor of the Senate.

I thank the Chair and yield the floor.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. CHAFEE. I thank the Senator from North Dakota. Now the Bingaman amendments, if we could deal with those quickly?

AMENDMENTS NOS. 1699, 1700 AND 1701, EN BLOC, TO AMENDMENT NO. 1676

Mr. BINGAMAN. Mr. President, I send three amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico (Mr. BINGAMAN), for himself and Mr. DOMENICI, proposes amendments numbered 1699, 1700 and 1701, en bloc, to amendment No. 1676.

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

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

The amendments are as follows:

AMENDMENT NO. 1699 TO AMENDMENT NO. 1676

(Purpose: To clarify that Federal laboratories are eligible to receive grants or to enter into contracts, cooperative agreements, or other transactions)

On page 310, strike lines 9 through 17, and insert the following:

"§ 5211. Transactional authority

''To further the objectives of this chapter, the Secretary may make grants to, and enter into contracts, cooperative agreements, and other transactions with—

''(1) any person or any agency or instrumentality of the United States;

''(2) any unit of State or local government;

''(3) any educational institution;

''(4) any Federal laboratory; and

''(5) any other entity.

AMENDMENT NO. 1700 TO AMENDMENT NO. 1676

(Purpose: To clarify that information on transportation-related research and development activities at Federal laboratories shall be included in the general exchange of information being promoted by the Secretary of Transportation)

On page 312, strike line 20 and all that follows through page 313, line 2, and insert the following:

''(B) to promote the exchange of information on transportation-related research and development activities among the operating elements of the Department, other Federal departments and agencies, Federal laboratories, State and local governments, colleges and universities, industry, and other private and public sector organizations engaged in the activities;''.

AMENDMENT NO. 1701 TO AMENDMENT NO. 1676

(Purpose: To clarify that innovative research performed by Federal laboratories shall be identified and applied to the intermodal and multimodal transportation research, development, and deployments needs of the Department and the transportation enterprise of the United States)

On page 317, strike lines 1 through 6, and insert the following:

''(2) identify and apply innovative research performed by the Federal Government, Federal laboratories, academia, and the private sector to the intermodal and multimodal transportation research, development, and deployment needs of the Department and the transportation enterprise of the United States;''.

Mr. BINGAMAN. Mr. President, I offer these on behalf of myself and Senator DOMENICI. They are very simple, conforming amendments to make it clear that the research activities that the Department of Transportation is engaged in are ones where they can call upon all of the scientific capability in our country, our Federal laboratories as well as our educational institutions, to get that research done. I do not think there is any opposition. I appreciate the chairman's allowing me to offer them at this time, and I urge Senators to support them.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. These amendments are acceptable on this side.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. We have also reviewed the amendments and find them acceptable.

The PRESIDING OFFICER. Without objection, the amendments are agreed to.

The amendments (Nos. 1699, 1700 and 1701) were agreed to en bloc.

VOTE ON AMENDMENT NO. 1697

The PRESIDING OFFICER. The question is on agreeing to the Dorgan amendment, amendment No. 1697.

Mr. DORGAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Dorgan amendment, amendment No. 1697. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCAIN (when his name was called). Present.

The result was announced, yeas 52, nays 47, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—52

Akaka	Faircloth	Moseley-Braun
Biden	Feinstein	Moynihan
Bingaman	Glenn	Murkowski
Boxer	Gorton	Murray
Bryan	Harkin	Reed
Bumpers	Hatch	Reid
Byrd	Hollings	Robb
Chafee	Inouye	Rockefeller
Cleland	Johnson	Sarbanes
Coats	Kennedy	Smith (OR)
Conrad	Kerrey	Specter
D'Amato	Kerry	Stevens
Daschle	Kohl	Torricelli
DeWine	Lautenberg	Warner
Dodd	Levin	Wellstone
Domenici	Lieberman	Wyden
Dorgan	Lugar	
Durbin	Mikulski	

NAYS—47

Abraham	Baucus	Breaux
Allard	Bennett	Brownback
Ashcroft	Bond	Burns

Campbell	Gregg	McConnell
Cochran	Hagel	Nickles
Collins	Helms	Roberts
Coverdell	Hutchinson	Roth
Craig	Hutchison	Santorum
Enzi	Inhofe	Sessions
Feingold	Jeffords	Shelby
Ford	Kempthorne	Smith (NH)
Frist	Kyl	Snowe
Graham	Landrieu	Thomas
Gramm	Leahy	Thompson
Grams	Lott	Thurmond
Grassley	Mack	

ANSWERED ''PRESENT''—1

McCain

The amendment (No. 1697) was agreed to.

Mr. CHAFEE. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. ROBERTS). The pending business before the Senate is the Bingaman amendment, as modified.

Mr. BINGAMAN. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON AMENDMENT NO. 1696, AS MODIFIED

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1696, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCAIN (when his name was called). Present.

The result was announced—yeas 43, nays 56, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—43

Akaka	Durbin	Mikulski
Biden	Feinstein	Moseley-Braun
Bingaman	Glenn	Moynihan
Boxer	Harkin	Murray
Bumpers	Hatch	Robb
Byrd	Hollings	Rockefeller
Cleland	Inouye	Sarbanes
Coats	Johnson	Smith (OR)
Conrad	Kennedy	Specter
D'Amato	Kerrey	Torricelli
Daschle	Kerry	Warner
DeWine	Lautenberg	Wellstone
Dodd	Levin	Wyden
Domenici	Lieberman	
Dorgan	Lugar	

NAYS—56

Abraham	Ford	Lott
Allard	Frist	Mack
Ashcroft	Gorton	McConnell
Baucus	Graham	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bryan	Hagel	Roth
Burns	Helms	Santorum
Campbell	Hutchinson	Sessions
Chafee	Hutchison	Shelby
Cochran	Inhofe	Smith (NH)
Collins	Jeffords	Snowe
Coverdell	Kempthorne	Stevens
Craig	Kohl	Thomas
Enzi	Kyl	Thompson
Faircloth	Landrieu	Thurmond
Feingold	Leahy	

ANSWERED ''PRESENT''—1

McCain

The amendment (No. 1696), as modified, was rejected.

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

Mr. STEVENS. I move to lay it on the table.

The motion to lay the amendment on the table was agreed to.

The PRESIDING OFFICER. The distinguished Senator from Rhode Island.

AMENDMENT NO. 1684 TO AMENDMENT NO. 1676

Mr. CHAFEE. Mr. President, I ask unanimous consent that amendment No. 1684, which is the Chafee amendment, the financial amendment, be agreed to, the motion to reconsider be laid upon the table, and the amendment be considered as original text for the purpose of further amendment.

I want to stress that it will be part of the bill. It can be amended. People can bring up their amendments to it.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. STEVENS. Mr. President, I just want to take a few minutes here, and I won't object in a few minutes to that request, but I think some consideration has to be given to some aspects of the highway and mass transportation problem. It has been very difficult for some of us to deal with. Neither my colleague nor I serve on any of the committees dealing with this subject. I do call attention to the fact that I will be chairing the committee that will deal with it later.

I am a little disturbed about what is happening in terms of small States—in particular, my State. I brought for Members to look at a comparison of my State and the whole United States and the delineation of the highways that exist in my State now. Those little gold dots are the villages and communities in my State that are not served by a highway or road yet. We have been a State now for 40 years and what do we find? If you look at the southeastern part, it looks like a panhandle on the right-hand side of this chart. That is the area of the marine highway system. We now are told we can't build any roads through the Forest Service land, and that is all Forest Service land down there except for a few communities and small areas of Native lands.

We are not considered a part of the mass transportation system although we haul about 2 million of your constituents per year through that area on our ferries. When we built those ferries 30 years ago, the price of them was a lot less than it is now. Today, the cheapest boats that you can buy of this type—they have to be ocean-going ferries—are built overseas, except we can't buy those because the Jones Act says we can't use foreign-built vessels from port to port in the United States. So, we can't use the land to build roads, we have to build our own ferries, and now we have to pay five times as much for those ferries than if we could buy them overseas. Now, it is mass transportation but this bill doesn't recognize ferries of this size as being any part of mass transportation.

I have some concerns that I have mentioned to my great friend from West Virginia about where the money is coming from when we do get to the process of financing that. I know he has some comments. I hope he won't get into that right now. We will work that out, I'm sure. But I want to point out to the Senate that we are going to have to work out a lot of things to finance this bill. This Senator wants to be a little happier with this bill. Right now I'm unhappy with the bill.

Take, for instance, the border money that is in this bill. We have analyzed that Border States Road Program. Our State at the present time has 1,538 miles of border with our neighbor, 20 percent of the total border of the United States, and we figure we are not even included in this. If you want to know why, it is because, for instance, money is made available for contract authority to grant States to improve international gateways, but, by definition, the gateways are groupings of border stations. Well, if you go along our border, you will find one border station; there is no grouping.

We have $18 million in this amendment for States for multistate corridor analysis. Well, we don't share the border with any other State, so obviously we are not involved in that allocation of money either.

Then there is $750 million authorized to be awarded by the Secretary, based upon commercial traffic volume, comparison of other traffic volume. Our State has a volume in just 4 months of the year. We can't compare with anyone for 12 months of the year in terms of traffic volume.

Mr. President, I don't have any objection to this; we are increasing the amount of money in a substantial way. As we do so, it seems that people are forgetting there are some places that don't have roads yet. In this bill, the whole philosophy here is, how do you improve existing roads or how do you really find a way to handle more traffic on the existing corridors that serve our country? I have no problem about that, but what is it going to do for a State like mine? Those roads that we need—we need to connect some of the villages to share schools, so we can share all of the services available from the State, local, and Federal Government. We are told now we can't go through parks, wildlife refuges, and other lands that are owned by the Federal Government. So in order to build them, we have to build longer roads to connect them.

I argued last year about RS 2477, and we lost that battle. We cannot use the original rights-of-way. Along the Kuskokwim and Yukon, in order to build the roads, instead of using the rights-of-way that traditionally have been used the last 100 years, we have to go far inland and build the roads back and then come back to the river again. You can't follow the traditional roads because RS 2477 rights-of-way are no

longer valid. Do we have any recognition for the increased costs of building roads where Federal policy prohibits us from using Federal lands in Alaska that would be available in any other State, particularly any other Western State? No, we don't have any.

We do believe we have to have some analysis on a national basis. Other States use ferries. I went over with my good friend from Hawaii, Senator INOUYE, and traveled on one of their brand-new ferries. It was a wonderful experience. I urge every Member of the Senate to do it. They have some ferries that are based on a new concept of suspension, and we were traveling 35 knots in a 6- to 7-foot sea. That is really very good. But those increased island ferries won't do any good for us. We have to comply with the Federal and international laws concerning safety of life at sea. We have to build enormous vessels in order to cross the Gulf of Alaska.

Now, again, the concept of ferries and of the marine highway system, of recognizing that my State is not going to build roads across land, it will use ferries and it will use the marine highway system for our connections, has to be thought about in terms of this bill. So far, I've not been able to get that consideration. I want to see what we can do about dealing with that.

The marine highway system, by the way, several Congresses ago—and I think my good friend from West Virginia will remember this—we made it part of the National Highway System. We thought that was a great advantage. But the money is in the interstate highway system and in the mass transportation system in this bill. So that is not going to do us much good for our marine highway system. That is not where the money is being increased.

I also call the attention to the Senate of the fact that some of these ferry laws—there is a provision of existing law that deals with the requirements for crew, the requirements for other things that apply to the offshore States—in Alaska and Hawaii are burdensome and increase the cost of ferries. I have talked to the Senator from New York about trying to get some understanding of that.

We also have a problem about the Indian reservation roads, the parkway and park roads, the National Wildlife System roads. All of those are covered by this bill. However, we have 70 percent of the parklands, we have 60 percent of the wildlife refuge lands, we have 50 percent of the Federal lands, and we are getting 4 percent of the money that is involved in those. Do you know why? We are prohibited from building roads through those systems, so we have to build roads around the systems, but we don't get any consideration of that cost as we try to face the cost of building a highway system.

I remember sitting in the gallery once right after we became a State, and one of my predecessors, Senator Gruening, was here on the floor speaking about roads in Alaska. That was 1959. I have to tell the Members of the Senate, the map he used was this map. We have not been able to build roads in Alaska because of the obstinate position—this is not partisan, it is not this administration—of the Federal Government. We have not been able to get access to build roads to connect our villages, our communities. We have depended until this time on air transportation to even ship bricks and hay.

Now the Postal Service, very wisely, is saying, ''Look, the ratepayers pay the subsidy for Alaska transportation and we are not going to do it anymore.'' Think of that now. Here is another county, as my grandmother used to say; we are hearing from someone else and they are saying, we are not going to continue to subsidize the transportation of goods in Alaska. We should do the same thing, they say, as everyone else—ship it by road. I remember one of them suggested we ought to be able to ship it somehow by Kodiak, by road. It would be an awful long bridge. Anyone that wants to, I would like them to ride that ferry. We call it the Dramamine Express.

When you talk about my State and the way we function under this bill, it's unfortunate. Maybe we should shift our committee assignments just before the highway bill passes so we can be heard in committees. I am becoming aware of the fact that every 5 years I come here to the floor and I complain. This year, I am going to do more than complain. This year, I am going to make some promises. I am not going to insist on carrying out the functions of this bill unless it becomes fairer.

I understand that donor States want back 91 cents out of every dollar their people pay into the road system. We wish we had more roads so we can pay more into the system. We can't increase that payment into the system until we can build some of these roads. Currently, we are using air-cushioned vehicles in some parts of Alaska to deliver mail. Good idea, right? We are getting no assistance whatsoever in any way to prepare the rights of way for air-cushioned vehicles. It would be a lot cheaper than running trucks over that land and cause a lot less environmental damage than running trucks over the land. But guess what. Rights of way for clearance for air-cushioned vehicles is not covered by this bill.

Now, Mr. President, it is not easy for us to come and really represent a State that is so far away. That is why I have developed such a fondness for my friends from Hawaii, because they go almost as far to get home as my colleague Senator MURKOWSKI and I do. What you don't realize is that, after we get home, we travel farther in our State to get from community to community than many of you travel to get home. We want to have some ability to come into the next century with a basic highway system that will at least meet the needs of some of the rural areas in terms of massing them together, connecting them together, so they can get the advantage of scale in dealing with their problems. That is particularly true of our problem now with regard to schools and villages and communities that are isolated through that vast area we call ''the bush.''

I could go on a little longer. We are going to go ahead with this bill, and I hope some Members who are working on it will think a little bit about what we are doing. As I said, we have the longest international border in the whole Nation. Under the trade corridor and border-crossing program, we qualify for little or none of the $775 million that deals with border-crossing problems. At least we should be able to deal with these increases. Again, the donor States problem—we have faced that problem. My good friend from West Virginia, Senator BYRD, has worked out a way of dealing with that in terms of increasing money so that there isn't any damage to the existing allocation.

I congratulate him, Senators GRAMM, CHAFEE, BAUCUS, D'AMATO, all of those who worked on this, so that we can have more money available to deal with the highway problems. The ''surface transportation problems'' is what we ought to really call this bill, a bill to solve surface transportation problems. My State is at least one-fifth of the land mass of the United States, and it is not recognized in this bill as being a State that needs highways, a State that needs assistance in dealing with the areas where we can't build highways in the marine highway system. Particularly, we need assistance in dealing with how do we get our ferries built under the Federal law that requires them built in this country and recognize them as mass transportation? If you go into the corridors where they are putting money into mass transportation, you will find we are buying rights of way, laying track, building terminals. We are doing a lot of things. Those same people who go to Seattle and then go up to Alaska on our ferries can travel all the way across the country under mass transportation, but when they get on our ferries to go up into Alaska, it's no longer mass transportation. If you ask the people on the ferries, they believe those are part of the mass transportation system, but it is not under this law.

I withdraw my objection to the request of the Senator, but I am going to be around here for a few days until we get some of these issues settled to our satisfaction and know that we can come into the 21st century along with everybody else as far as a new surface transportation program. Thank you very much.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I think there is a unanimous consent request pending.

The PRESIDING OFFICER. The Senator is correct.

Is there objection?

Mr. BAUCUS. Reserving the right to object, Mr. President, I might say to my good friend from Alaska, my State of Montana has the same problem Alaska has, being a thinly populated State. We have very much experienced a lot of these same problems with border crossings and what not. One of the issues the Senator mentioned was the border crossings, and maybe there is a way we can work that out in this bill. The mass transit provisions, though—the ferries, for example—are not within this committee's jurisdiction. That is within the Banking Committee's jurisdiction. We expect to have an amendment soon. The Senator makes a basic, good point. It is similar to one I have made many times. I appreciate his coming to the floor.

Mr. STEVENS. Mr. President, I have checked, and since we have become a State, we have built very few new bridges. We have replaced the ones destroyed in the 1964 earthquake, with one exception. The reason we have not built new bridges is we haven't had any new roads.

Mr. President, I will not object.

Mr. LAUTENBERG. Mr. President, I rise to express my support for the changes that have been made to the ISTEA II bill. This legislation is now much more balanced and fair to all states than the original bill last fall. I want to thank the distinguished Chairman of the Committee, Senator CHAFEE, and other Senators involved for their assistance in improving this bill.

I was never happy with the original bill, because it falls way short of addressing New Jersey's growing needs. While the underlying bill recognized the special situation of some states, particularly large, western, low-density states, and those in the Southeast, it did not recognize the unique needs of densely populated, urbanized states with significant passenger, commerce and freight traffic.

Mr. President, last year, the ISTEA II bill that came to the floor was not regionally balanced and did not recognize the special needs of high density, urban states like New Jersey.

This amendment includes a program that I authored which is designed to address the needs of high density, urban states. Called the High Density Transportation Program, this new program addresses the special needs of states where high population density and heavy traffic volume create perpetual bottlenecks in the flow of goods and people through our national transportation system, resulting in tremendous wear and tear on the roads and reduced economic productivity. We can all argue over how much money should go to one region or another, but to deliberately leave out factors that allow for consideration for high density, urban states in a major transportation bill is unacceptable. That's what happened in the original bill.

That's why I am very pleased that the Chairman and Ranking Member of the Environment and Public Works Committee and the Chairman of the relevant Subcommittee, agreed to include this new High Density program in the new bill. And that's why this is now a more balanced bill.

The High Density Transportation Program is a $360 million annual program, distributed over five years. New Jersey will be guaranteed $36 million each year, and will be eligible for more, for projects that reduce congestion, increase mobility, and maintain the infrastructure. Those projects may include construction and maintenance of roads, mass transit, bridges, even bike paths. As long as those projects reduce congestion and improve mobility.

This program, coupled with the increase in apportionments and the funds the Committee included in the Bridge Discretionary account last fall, show a total highway funding increase for New Jersey of approximately $780 million over the life of the bill. This comes out to an average of about $130 million a year over six years. This increase is on top of the yearly average of $532 million a year the original ISTEA II bill included for New Jersey.

Mr. President, this proposal is simple. It gives all states an increase, but also accounts for the needs of states that were not fairly accommodated in the original bill. With this new proposal, New Jerseyans can breathe a sigh of relief, since our needs will begin to be met.

Mr. President, those needs are great. Transportation funding is especially critical in my state. The Garden State is one of the most important links in our nation's transportation system. The most densely populated state in the nation, it also has the highest vehicle density on its roads. Located between two heavily populated metropolitan areas, New Jersey is known as the corridor state, linking commerce and travel to the northeast and the rest of the country. Over 60 billion vehicle miles are traveled on New Jersey's roads annually. The ability of trucks and cars to move freely on New Jersey's roads directly affects New Jersey's economy, as well as the entire region.

Millions of people have traveled along New Jersey's highways. They travel from the South and West to New York City, Boston and New England. And people in New York and New England travel through New Jersey on their way to places like the Jersey shore, Florida or Washington, D.C.

But our roads are used for more than just vacations. Every day, 324,000 tons of goods made in New Jersey are transported on New Jersey's roads by 134,000 trucks.

Many of these trucks are coming from the Ports of Newark and Elizabeth. They are transporting cars and other goods that arrive from countries like South Korea, Great Britain, Germany, Taiwan and Indonesia. The Port of New York and New Jersey is the busiest on the East Coast.

Despite the critical importance of New Jersey's infrastructure to the nation, it is in dismally poor shape, and it is getting worse by the hour. Nearly 20 percent of New Jersey's interstate mileage is in poor or mediocre condition. And more than 45 percent of our bridges are in deficient condition.

Mr. President, New Jersey's roads and bridges take an unbelievable pounding. Our hot summers and harsh winters take a huge toll on its infrastructure. Road salt in the winter and ocean salt year round add to the damage.

In addition, New Jerseyans and those who travel through my state often face untenable congestion. Travelers in both cars and trucks struggle for hours every day with New Jersey's highway stops and starts. And our heavily used roads and bridges are badly in need of additional maintenance.

Mr. President, the status of New Jersey's transportation infrastructure has a direct effect on the state and region's economic vitality and on every resident's quality of life. But, more importantly, it affects the entire nation's economic vitality. And, the future challenges to that infrastructure are ominous. In the next six years, there probably will be more travel on our roads, more cargo coming into our ports and more rapid deterioration of our transportation infrastructure.

Mr. President, I seek to educate my colleagues about my State, because I believe that New Jersey should get its fair share. No more, no less.

Regrettably, last fall's ISTEA bill provided New Jersey with less money in 1998 than it received in 1997. Our transportation needs increase every year, but our funding level went down under the previous ISTEA bill. This was not acceptable.

The last time I took to the floor to discuss S. 1173, I spoke for nearly four hours about the devastating effects this bill will have for New Jersey's transportation infrastructure. Since then there have been important changes which have greatly improved this bill. New funding has enabled the Environment Committee to ease the pain to some states which were hit the hardest by the original Environment Committee apportionment formulas.

New Jersey is the most densely populated state in the nation, and our roads carry more traffic per lane mile than any state in the country. New Jersey is the true corridor state. Ten percent of the nation's total freight either originates, terminates, or passes through New Jersey. These conditions create burdens that have a direct negative impact of the state's transportation infrastructure, the environment, and economic productivity. In addition, our high level of urbanization increases the costs associated with road repair and construction. The High Density Transportation Program is established to address those conditions.

Mr. President, I would like to thank Chairman CHAFEE for his work on this

bill and commend him for his continuing efforts to produce a good and balanced ISTEA reauthorization bill. The Committee's decision to include the High Density program truly improves this bill over last year's. As I said at the Committee mark-up, we may have to nominate Senator CHAFEE for a peace prize by the time this process is over.

I would also like to take this opportunity to thank Senator WARNER and Senator BAUCUS for all of their hard work and their leadership on this bill.

I look forward to continuing to work with the Chairman and other Committee members in the coming months as we debate this bill on the Senate floor and in Conference.

The PRESIDING OFFICER. Does the Senator from Rhode Island renew his request?

Mr. CHAFEE. I do renew that request.

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

The amendment (No. 1684 to amendment No. 1676) was agreed to.

Mr. CHAFEE. Now, the amendment is adopted?

The PRESIDING OFFICER. That is correct.

Mr. CHAFEE. The motion to reconsider was part of that and it was laid on the table?

The PRESIDING OFFICER. That is correct.

Mr. CHAFEE. That is all going to be original text?

The PRESIDING OFFICER. That is correct.

Mr. CHAFEE. I thank the Senator from Alaska.

Mr. BAUCUS. Mr. President, I ask unanimous consent that Senators MOSELEY-BRAUN and WYDEN be added as original cosponsors to the Chafee amendment.

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

Mr. CHAFEE. Mr. President, I ask unanimous consent that Senator COLLINS be added as a cosponsor of the Chafee amendment.

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

Mr. CHAFEE. Mr. President, this is the order.

Senator WYDEN has an amendment that has been agreed to. Actually, it turns out that it is my amendment; I am introducing it. This has been agreed to. We would like to move to the McConnell amendment. That will be a long one. I don't see Senator MCCONNELL here, but I urge him to come because we want to get started on that. There is a time agreement suggested of 3 hours on his side, 2 on our side, and 45 minutes for Senator DOMENICI from New Mexico. We are ready to go.

AMENDMENT NO. 1702

(Purpose: To further clarify the integrated decision-making process for surface transportation projects)

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for himself, Mr. WYDEN and Mr. GRAHAM, proposes an amendment numbered 1702.

Mr. CHAFEE. 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:

On page 162, after the end of line 25, insert the following:

''(5) CONCURRENT PROCESSING.—The term, 'concurrent processing' means to the fullest extent practicable, and to the extent otherwise required, agencies shall prepare environmental impact statements and environmental assessments concurrently with and integrated with environmental analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental review laws and executive orders.''

On page 163, lines 10–12, strike ''with the requirements'' through the end of the sentence, and insert ''for surface transportation projects at the earliest possible time, including, to the extent appropriate, at the planning stage with the agreement of the State transportation agencies and the cooperating agencies.''

On page 163, lines 17–18, strike ''with the planning, predesign stage, and decision making''.

On page 164, line 2, strike ''initiatives.'' and insert ''initiatives, economic development and transportation initiatives.''

On page 164, lines 17–18, strike ''with the transportation planning and decisionmaking of the'', and insert ''for surface transportation projects by''.

On page 166, line 2, delete ''(rather than sequential)''.

On page 167, line 7, insert ''and the public on request'' after ''cooperating agencies''.

On page 168, line 11, strike ''grant'', and insert ''take action on''.

On page 169, after the end of line 10, insert the following:

''and assure early consideration of alternatives to a proposed project, including alternatives that address transportation demand consistent with 23 U.S.C. 134(i)(3).''

On page 169, strike lines 20 through page 170, line 2.

On page 170, line 15, after ''agreement'', insert ''that has been developed with public involvement''.

On page 172, line 3, after ''APPROACHES.—'' insert ''In addition to existing formal public participation opportunities,''.

On page 172, line 5, after ''used'', insert '', to the extent appropriate,''.

On page 174, line 19, after ''subsection (a)'', insert ''consistent with Part 1501, et seq., of Title 40 of the Code of Federal Regulations.''

On page 175, line 6, insert the following new subsection and redesignate the following subsections accordingly:

(c) Section 112 of title 23, United States Code, is amended by adding at the end the following new subsection:

''(g) SELECTION PROCESS.—It shall not be considered to be a conflict of interest, as defined under section 1.33 of title 23, Code of Federal Regulations, for a State to procure, under a single contract, the services of a consultant to prepare any environmental assessments or analyses required, including environmental impact statements, as well as subsequent engineering and design work on the same project, provided that the State has conduced an independent multi-disciplined review that assesses the objectivity of any analysis, environmental assessment or environmental impact statement prior to its submission to the agency that approves the project.

Mr. CHAFEE. Mr. President, I offer an amendment on behalf of myself and Senators WYDEN and GRAHAM to improve the provisions of ISTEA II that establish an integrated decisionmaking process for surface transportation projects—the so-called NEPA streamlining provisions.

ISTEA II includes a number of provisions designed to better integrate NEPA's requirements into the decisionmaking process for surface transportation projects. The intent was to provide for earlier consideration of environmental impacts under the National Environmental Policy Act and to consolidate the permitting process for highway projects—a goal that we can all share. With the help of the sponsors of the original provisions, Senators GRAHAM and WYDEN, as well as others on the committee, I believe that we have reached agreement on a package of improving amendments to that language that will address concerns that have been raised by both the environmental community and the State transportation agencies.

The amendment will, among other things: allow greater public access to key decision documents relating to surface transportation projects; provide for early consideration of alternatives that address transportation demand alternatives; and clarify that the state transportation planning process does not trigger NEPA.

With these improvements, I believe that we have crafted a process that will indeed improve the decisionmaking process for surface transportation projects.

Mr. President, this is an amendment that has been agreed to. It clarifies the integrated decisionmaking process for surface transportation projects. It has been worked out. It deals, to a degree, with the National Environmental Policy Administration Act provisions. We have all worked on it. I want to thank Senators GRAHAM and WYDEN for their fine work on this. It is a fine amendment. I know the Senator from Oregon is here.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I will only take 2 or 3 minutes. I thank the Senator from Oregon for letting me impose on him. I want to say that I am very sympathetic to the case that has been made by the distinguished senior Senator from Alaska. I hope we can do something to help him. He is chairman of the Appropriations Committee, and all of us who have anything in this bill at all, who are impacted by this bill, all of us who support this bill, are going to have to look at this chairman

down the road to help us to implement what we are doing here. I hope we will find a way to help him.

I am the only former House Member who is now serving in the U.S. Senate who voted for the addition of Alaska to the Union. I was sworn in with the late Senator Gruening, about whom Mr. STEVENS spoke. That case has been made time and again. I want to say, Mr. President, I have never heard the case made better than Senator STEVENS has made it. I can understand how his people feel. They need help. It seems to me that whatever helps Alaska helps West Virginia. That is the way I look at it. I want to be supportive of finding a positive response to the Senator's needs. I want to help him.

Mr. STEVENS. If the Senator will yield for a moment, I thank the Senator from West Virginia. That help would be meaningful.

Mr. BYRD. I thank the Senator and yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, the pending business, I believe, is the Chafee-Wyden-Graham amendment. I want to take a few minutes to explain to my colleagues what we are pursuing with this amendment. Before Senator BYRD leaves the floor, I want to express my thanks to him for the very extensive input and help that he has given this Member, both on the entire bill and particularly on the provisions that relate to streamlining of the ISTEA permit process both on the transportation and the environmental side. I thank Senator BYRD.

Mr. BYRD. I thank the Senator.

Mr. WYDEN. Mr. President, another way to describe this amendment, which deals with the transportation and environmental review process that is central to getting these projects on line and dealing with our transportation issues, is the ''do-it-right-once'' amendment.

What we have in this country today is essentially a disjointed process for doing transportation and environmental reviews. In effect, you have one track going down the road trying to address the various requirements essential to OK'ing a project from the transportation side. You then have a separate effort going forward to deal with environmental reviews. Instead of the two efforts being combined at every step of the process, time and money is wasted as these separate undertakings go forward. So what you have is an extraordinary amount of duplication. You have duplication as it relates to the environmental side and as it relates to the transportation side, and you waste an extraordinary amount of time as it relates to getting these projects actually constructed.

I think, as every Senator knows, for transportation projects time is money. Delays in approving transportation projects not only increase the cost of these projects; they also cause lost productivity to our economy and added stress for the commuters that are stuck in traffic.

This bill is the result of extensive bipartisan discussion. Senator GRAHAM and I began this in the committee many months ago. Senator SMITH of New Hampshire has been extremely helpful in this effort and, of course, Senators CHAFEE and BYRD have been very extensively involved. We have now forged a comprehensive package that will streamline transportation and environmental reviews and bring much-needed relief for these key projects.

The bill now will increase the funding for critical highway projects that will ensure that this money is better spent, because we will be speeding up the process for getting the projects built.

Let me be very clear to the Senate. We are not talking about changing the environmental laws in any way. I wouldn't support that kind of effort, and my cosponsors of this amendment wouldn't support it either. This effort to streamline transportation environmental reviews, in fact, keeps every one of the environmental laws in place. It simply says that we are going to improve the decisionmaking process by building the consideration of environmental factors into transportation decisions at the front end of the process rather than at the tail end as has so often happens.

So if we were to do nothing else in this bill, nothing else but to say at the beginning of an effort to get a transportation project built we were going to start consulting on environmental issues at that time, I think it would be a worthy endeavor. But this legislation doesn't just streamline the process; it complies with the environmental laws, and it ensures that there is early consideration of all realistic alternatives. In the urban areas, that means looking at transit, at bike paths, and a variety of nontraditional transportation solutions. But we don't require pointless consideration of these approaches in places where they don't make sense.

Today's changes also increase the opportunities for public involvement. Many of our colleagues have been visited by transportation groups, by State officials, by environmental leaders, saying that they wanted public involvement early in the decisionmaking process. This amendment ensures that is done. In my view, it also increases the chance for early public support when the decisions are made rather than, as happens so often today, having public opposition develop later in the process, which can hold things up for many months.

In conclusion, Mr. President, some have argued that you might do even more than this amendment envisages. They say, put transportation officials in charge of everything; put them in charge of transportation and environmental matters. Under that approach, which I think would be a mistake, I think we are not going to end up saving a lot of time in the review process. More likely, it may lead to questionable environmental decisions and considerable delay when these decisions are challenged in court. There is a better route to improving our transportation system. We can make the process faster, cheaper, and better while complying with all of our environmental laws at the same time.

I see that the chairman of the committee has returned. I want to express my thanks to Chairman CHAFEE. When I and Senator GRAHAM brought him this ISTEA streamlining amendment last summer, he gave us considerable time as we sought then to bring together the industry and environmental groups to support it. Also, the ranking minority member, Senator BAUCUS, who has helped me as a new Senator on a variety of issues, was involved at every step of the way. I thank Senator BAUCUS for that effort.

We are here now as a result of the deliberations that began this summer. This is an amendment that saves time and money and helps strengthen our environmental laws and public support for them at the same time. I urge support of the amendment.

I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, the Senator from Oregon has brought a very valuable addition to the NEPA process. Most of us, when we deal with the National Environmental Policy Act with respect to projects, believe that the policy is right; that is, that environmental alternatives should be considered fully. But we also experience delays, sometimes so long that we begin to wonder, what is going on here? Is there a better way of doing this? All of us have been there.

This is the very first very serious effort to try to solve that problem; that is, on the one hand, keep the protection of the National Environmental Policy Act, which I think we all want —this Senator certainly does—but, on the other hand, make sure that the process is streamlined so that it doesn't take quite so long, so the decisions can be made, and so there is a little more confidence amongst the public in what these various agencies are attempting to do.

It is simple. It just makes the review process not sequential but concurrent. It should have been concurrent in the first place.

Second, it sets up a schedule of review at the start that the agencies must agree on so each agency knows kind of what it is doing first, if that is the theory, and, beyond that, it sets up a consultation process when there is disagreement among the agencies.

But it is a very good amendment. In fact, I think that this is going to go a lot further—the effect of this amendment—and help many, many more people than is realized. We often have

these grandiose amendments and bills around here, and they sound like they are going to do a lot and end up not doing much at all. This is a little bit the opposite. It is the process; it is streamlining. Some may think that it is not a big deal, but it will be a big deal—a huge deal—certainly if it is implemented in the spirit in which the amendment is intended—and I expect that will be the case. As a consequence, we public servants will be serving our people a little bit better than we would have otherwise.

I compliment the Senator very much on his amendment. It is a very good idea. I thank him for it.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, it has been a great pleasure to work with the Senator from Oregon over the last several months in the development of this legislation. I share the assessment of the Senator from Montana. It will be seen as one of the most important new ideas in highway transportation planning.

Basically, it is consistent with the evolution that has occurred within the American environmental movement. It wasn't too many years ago that a principal goal of many who described themselves as being environmentalists was to achieve the goal of no growth, no action. It was essentially a negative and defensive posture. As the environmental movement has become a more pervasive part of our society in the way in which we look at our responsibility, it has become a movement which attempts to shape the future in an affirmative way that is sensitive to environmental considerations rather than stagnate in the status quo.

I believe this amendment is part of that evolutionary process, because what it basically says is, let us ask everyone who is a stakeholder in a major Federal participatory transportation project to sit down at the table when the project is in its conceptual form. If there is a problem with this project that is going to render it incapable of ever being permitted, let's put that on the table at the beginning, and, if the project will fundamentally change it, relocate it to a more appropriate site, or whatever is necessary.

If, on the other hand, it is not inherently flawed but there are going to have to be modifications in the design or construction techniques, let's know that at the beginning of the process so that everyone is operating from a position of candor and openness.

Unfortunately, the opposite of what I just described is what happens too often today; that is, that these requirements are not disclosed until the project has been many years in planning and design and millions of dollars spent, and then you find out that there are these flaws, or fatal conditions, or issues that will require a similar investment of time and money for redesign.

So I think this is an amendment that will advance the modern approach to environmentalism and reduce the legitimate public anger and frustration when they see millions of dollars and years of time being discarded because of issues raised at the end of the process, and it will build a new level of confidence and a higher level of environmental sensitivity in our transportation planning.

So I am strongly supportive of this amendment. I appreciate the leadership that so many Members of this Chamber have given to this. I particularly commend my friend and colleague from Oregon and urge that the full Senate join in support of this and that we see when this bill is negotiated with the House of Representatives that the provision will be included in any final legislation that is sent to the President for his signature.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. CHAFEE. Mr. President, we are ready to vote.

Mr. BAUCUS. Mr. President, I apologize. I neglected to mention the hard work of the Senator from Florida. He spoke earlier. I know both he and Senator WYDEN from Oregon worked very hard on this, as did Senator SMITH, who is not on the floor with us. But the three of them worked together to put this together.

I might say it is another example of the cooperation and compromise. Often Senators stand up on the floor, and, I might say, speak rhetorically, knowing that they are not going to get the results but trying to score points back home. These are Senators that worked together to accomplish something solid. And it is worthwhile. I compliment the three of them for being cooperative in compromising and getting the work done.

Mr. CHAFEE. Mr. President, I want to salute the Senators who worked so hard on this: Senator WYDEN and Senator GRAHAM. We are very proud that they are Members of the Environment Committee. They are very valuable members of that committee. And Senator SMITH worked very hard, and is likewise.

So we are ready to go to a vote.

The PRESIDING OFFICER. The question is on agreeing to the Chafee-Wyden-Graham-Baucus-Smith amendment No. 1702.

The amendment (No. 1702) was agreed to.

Mr. CHAFEE. Mr. President, the Senator from Texas would like to talk on an amendment that we have agreed to and then is going to discuss another subject.

I guess we have not moved to reconsider this.

Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

PRIVILEGE OF THE FLOOR

Mr. GRAHAM. Mr. President, could I ask the Senator from Rhode Island a question? I have a unanimous consent request to ask a member of my staff to be on the floor.

Mr. CHAFEE. Yes.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I ask unanimous consent that David Lee from the Florida Department of Transportation be given floor privileges throughout the consideration of ISTEA II.

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

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Senate proceed shortly, following the Senator from Texas having the floor, to the consideration of Senator MCCONNELL's amendment regarding contract preferences, and that there be 8 hours of debate, equally divided between Senator MCCONNELL and Senators CHAFEE and BAUCUS, prior to the motion to table, with an additional 45 minutes under the control of Senator DOMENICI. I further ask unanimous consent that, following the expiration or yielding back of time, the Senate proceed to vote on or in relation to the amendment and that no other amendments be in order prior to the vote.

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

Mrs. HUTCHISON. Mr. President, let me, if I could, ask the chairman a question. Does he want me to introduce the amendment that is agreed to and get that taken care of?

Mr. CHAFEE. I think now is a good time, I say to the Senator from Texas. She has an amendment that has been agreed to. Why don't we present that and dispose of that?

AMENDMENT NO. 1703 TO AMENDMENT NO. 1676

Mrs. HUTCHISON. Mr. President, this just reiterates the importance of the cooperation between the Department of Transportation and the transportation research projects now being done by the Department of Transportation through several universities in my State of Texas, as well as California, Minnesota, and the State of Washington. They are doing very valuable research on relieving congestion. Through transportation and computer systems, they are able to determine how you can relieve congestion in our major cities.

I appreciate the fact that both sides have agreed to this amendment.

I offer it for consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas (Mrs. HUTCHISON) proposes an amendment numbered 1703.

At the end of line 16, page 397 insert:

''(3) CONTINUATION OF PARTNERSHIP AGREEMENTS.—The Secretary shall continue through to completion public/private partnership agreements previously executed to

promote the integration of surface transportation management systems, including the integration of highway, transit, railroad and emergency management systems.''

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, now I would like to see if there could be an amendment—Senator ABRAHAM wants to offer a short amendment. I am told it will take only a couple of minutes. I am willing to let him do that if it is acceptable to the Senator from Rhode Island, but it would change the unanimous consent.

Mr. CHAFEE. Why do we not adopt the Senator's amendment, unless you want more time on it.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Texas?

Mr. BAUCUS. Mr. President, parliamentary procedure, please. Where are we?

The PRESIDING OFFICER. The pending question is the Hutchison amendment.

Mr. BAUCUS. We have reviewed it. It is fine on our side.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1703) was agreed to.

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

Mr. BAUCUS. 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 Michigan.

Mr. ABRAHAM. Mr. President, I seek unanimous consent to introduce an amendment at this time, after which the Senator from Texas would then be able to resume the floor for the purpose of the remarks she had previously been approved to make.

The PRESIDING OFFICER. The Senator has a right to offer his amendment.

AMENDMENT NO. 1704 TO AMENDMENT NO. 1676

(Purpose: To make access to the Ambassador Bridge, Detroit, Michigan, eligible for funding).

Mr. ABRAHAM. Mr. President, I send an 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 Michigan [Mr. ABRAHAM], for himself and Mr. LEVIN, proposes an amendment numbered 1704 to amendment No. 1676.

Mr. ABRAHAM. 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:

On page 136, after line 22, add the following:

SEC. 11 . AMBASSADOR BRIDGE ACCESS, DETROIT, MICHIGAN.

(a) IN GENERAL.—Notwithstanding section 129 of title 23, United States Code, or any other provision of law, improvements to access roads and construction of access roads, approaches, and related facilities (such as signs, lights, and signal) necessary to connect the Ambassador Bridge in Detroit, Michigan, to the Interstate System shall be eligible for funds apportioned under paragraphs (1)(C) and (3) of section 104(b) of that title.

(b) USE OF FUNDS.—Funds described in subsection (a) shall not be used for any improvement to, or construction of, the bridge itself.

Mr. ABRAHAM. Mr. President, the Ambassador Bridge is the single greatest border crossing in the United States. Almost 10 million vehicles cross the bridge each year; almost 3 million commercial vehicles, as many as 10,000 trucks per day. It constitutes, in terms of business activity, almost $350 billion a year in trade for the United States. In fact, 26 percent of all United States-Canada trade traverses the Ambassador Bridge. That trade is expected to increase by 180 percent by the year 2015, which would translate into almost 5.4 million commercial vehicles a year.

This major trade artery is not connected directly to any of the nearby interstates however. That requires commercial vehicles to traverse local roads to get to the freeways and interstates. In these times of ''just in time'' deliveries, these delays are totally unjustified for such a major trade route. However, even though it is privately owned, it is part and parcel of our National Highway System. However, because it is privately owned, the Federal Highway Administration has determined that the State of Michigan may not use any of its Federal funds to improve the approaches to the bridge. This amendment will allow the State to spend its funds for these projects, if it wishes.

No State will lose any funds with this amendment. It simply will allow Michigan to use the funds it already receives through the independently-derived allocations on these approaches. Furthermore, no funds will actually be spent on the privately-owned portion of the bridge, only on the publicly-owned approaches.

Finally, the bridge authority is providing the Michigan Department of Transportation with toll credit information. This may provide up to all of Michigan's 20 percent matching share requirement.

Mr. President, I offer the amendment on behalf of myself as well as, I know, Senator LEVIN.

I believe the amendment has been cleared on both sides. I hope we can agree to it at this time.

Mr. CHAFEE. Yes; the amendment has been cleared on this side.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from Michigan, Senator LEVIN, also would like to be a cosponsor of the amendment.

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

Mr. LEVIN. Mr. President, I'm pleased to join my colleagues from Michigan in offering an amendment which I understand the committee will accept. I thank the managers.

The first amendment allows improvements and construction on the United States approaches to the Ambassador Bridge from Detroit to Windsor, Canada, to be eligible for federal funding. As my colleagues may know, the Detroit-Windsor border crossing sees one of the largest, if not largest, volumes of international trade in the world. As such, the corresponding volume of traffic is tremendous, particularly truck traffic. The amendment does not allocate funds to repair the years of wear and tear, simply allows currently publicly owned streets and facilities to compete for federal funding. This amendment is important to the city of Detroit, the State of Michigan, and the country because of the significant volume of international trade moving across the bridge.

Mr. BAUCUS. We accept the amendment. I think it is important to clarify that, as a result of this, there is no new money for Michigan but that Michigan will be able to use its own money, particularly its NHS funds, for this access road, basically, to the bridge. With that understanding, we accept the amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1704) was agreed to.

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

Mr. CHAFEE. 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 Texas is recognized, under the previous order.

Mrs. HUTCHISON. Mr. President, are we speaking as in morning business for this time period, so that I can introduce a bill? If not, I ask unanimous consent to do so.

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

Mrs. HUTCHISON. I thank the Chair.

(The remarks of Mrs. HUTCHISON and Mr. GRAMS pertaining to the introduction of S. 1711 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I say to the distinguished Senator from Texas that we have a little time here if she has anything further she would like to discuss on this important measure that she presented.

The program now is for Senator MCCONNELL to come over and present his amendment. He said he would be here at 12:30. We have extra time should the Senator want it. Apparently not, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. CHAFEE. Mr. President, I ask unanimous consent that the following members of the Joint Committee on Taxation staff be given the privilege of the floor during the ISTEA debate: Lindy Paull, Ben Hartley, Tom Barthold, Judy Owens, Steve Arkin, Joe Nega, Carolyn Smith and Maxine Terry.

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

Mr. CHAFEE. Mr. President, we have two amendments that have been cleared on both sides. I will start with the Inhofe amendment.

AMENDMENT NO. 1705 TO AMENDMENT NO. 1676

(Purpose: To improve the provisions relating to contracting for engineering and design services)

Mr. CHAFEE. Mr. President, I send an 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 Rhode Island [Mr. CHAFEE] for Mr. INHOFE, proposes an amendment numbered 1705 to amendment No. 1676.

The text of the amendment follows:

On page 135, strikes lines 2 through 5 and insert the following: ''aid highway funds, or reasonably expected or intended to be part of 1 or more such projects, shall be performed under a contract awarded in accordance with subparagraph (A) unless the simplified acquisition procedures of the Federal Acquisition Regulations apply.''

On page 135, line 7, insert '', or salary limitation inconsistent with the Federal Acquisition Regulations,'' after ''restriction''.

On page 135, line 15, strike ''cost principles'' and insert ''procedures, cost principles,'' after ''the''.

On page 135, line 24, strike ''process, contracting based on'' and insert ''procedures of''.

On page 136, line 12, strike ''process'' and insert ''procedure''.

Mr. CHAFEE. Mr. President, this amendment deals with contracting for engineering and design services. It would ensure that the engineering- and design-related aspects of a project promote competition, foster the use of innovative technologies and ensure consistency in the pricing of engineering and design contracts.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1705) was agreed to.

AMENDMENT NO. 1706 TO AMENDMENT NO. 1676

(Purpose: To allow funding under the surface transportation program for programs to reduce motor vehicle emissions caused by extreme cold start conditions)

Mr. CHAFEE. Mr. President, I have an amendment on behalf of Senator ABRAHAM. I send it 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 Rhode Island [Mr. CHAFEE] for Mr. ABRAHAM, for himself, and Mr. LEVIN, proposes an amendment numbered 1706 to amendment No. 1676.

The text of the amendment follows:

On page 183, at the end of line 23 insert the following:

(5) in subsection (b)(9), by striking ''section 108(f)(1)(A) (other than clauses (xii) and (xvi)) of the Clean Air Act'' and inserting ''section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A))'';

Mr. CHAFEE. Mr. President, this amendment would allow funds that are allocated under the Surface Transportation Program to be used for programs to reduce motor vehicle emissions caused by extreme cold-start conditions.

The problem is that in the northern States when cold weather comes, the starting of an engine is the highest emission point from the engine. Ninety percent of engine wear happens when the car is started. The engine wear in cold climate conditions is twice this amount.

This amendment has been cleared by both sides. What it will do is permit these funds to be used for some kind of heaters that might be installed to warm up the catalytic converter or other aspects of the engine so that when it is started, it will not start cold and will not have the heavy emissions that occur absent some warming techniques.

The PRESIDING OFFICER. Is there further debate?

Mr. BAUCUS. Mr. President, we reviewed the amendment, and we think it is a good idea.

I also ask unanimous consent that Senator LEVIN be added as a cosponsor.

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

Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1706) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the votes by which these two amendments were agreed to.

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

The motion to lay on the table was agreed to.

PRIVILEGE OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that John Hemphill and Michael Ling, fellows on the Environment and Public Works Committee, be given the privilege of the floor during debate on S. 1173.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Mr. President, we are operating under an agreement that the Senator from Kentucky was to begin debating his amendment at 12:30. That was 35 minutes ago. I know that the chairman of the committee, Senator CHAFEE, and myself very much want to help the Senator from Kentucky by finding time for him to debate this amendment—offer it and debate it. We reached this agreement with the Senator from Kentucky some time ago, over an hour ago, that he would be here at 12:30 to offer the amendment. The chairman has been so very gracious in accommodating Senators right and left and from all parts of the country to exercise their rights. I inquire as to where might our tardy Senator be, or when is he going to be here?

Mr. CHAFEE. Mr. President, I don't know where our errant brother is. We are ready. I think the ranking member makes a good point. We have been waiting. The agreement was that we were going to start at 12:30. In the famous words of the Senate, the Senator has been described as being ''on his way'' for the last 45 minutes. So I hope he will be here soon. I must say that I am thinking of, at quarter past, getting up and proposing—and that's 7 minutes from now—that all time after that be deducted from the proponents' side. Let's wait and see. I am going to make an effort to round up the Senator from Kentucky and see if we can't get started.

Mr. BAUCUS. In fact, I agree with the chairman and say that if he is not here by 1:45, it would only be fair to the rest of the Senate that time be charged against him.

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. TORRICELLI. 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. TORRICELLI. Mr. President, I ask unanimous consent to proceed in morning business for 10 minutes.

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

CALLING FOR A VOTE ON JAMES HORMEL

Mr. TORRICELLI. Mr. President, last week, President Clinton called upon the Senate to use but one principal criteria when considering nominations for ambassadors for the United States. In his words, that criteria simply stated is: ''Will he or will he not be a good ambassador?''

Over 30 years ago, the Senate was confronted with a similar situation to one before us today. This body was asked to assess whether Patricia Harris

should be approved to be U.S. Ambassador to Luxembourg. She was a prominent lawyer. There was no question about her qualifications. Indeed, during the course of her career, she went on to be Secretary of HUD and of HEW. But, in 1965, Patricia Harris represented the first African American woman to become an American ambassador. The Senate then was left with a challenge of meeting what Thomas Jefferson considered our highest calling. That is, in his words, whether this would be a nation of ''equal opportunity for all and special privilege for none.''

I cite the judgment of the Senate in confronting the nomination of Patricia Harris for Ambassador to Luxembourg because the Senate now faces a similar choice. President Clinton has sent before the Senate the name of Mr. James Hormel to become Ambassador to Luxembourg. Mr. Hormel was a member of the U.S. delegation to the U.N. Human Rights Commission. Last May, the Senate approved the nomination for him to serve as an alternate representative to the 51st session of the U.N. General Assembly. Last October, the Foreign Relations Committee recommended Mr. Hormel as our envoy to Luxembourg. But for a few of my colleagues, that is not enough. Just as Patricia Harris met opposition to her nomination as Ambassador to Luxembourg, Mr. Hormel is now being prejudged by some because of his sexual orientation.

Mr. President, I rise today not simply to advance the nomination of Mr. Hormel, but I rise against those who would prejudge his qualifications based simply on the prejudice because of his personal lifestyle and his sexual orientation. I believe that fairness and decency require that Mr. Hormel be afforded his God-given right to serve his country in a position for which he is clearly qualified.

No one can argue with his professional experience, his academic achievement, or the qualifications that led this Senate previously to send his name to be a member of our representation to the United Nations or that led the Foreign Relations Committee to recommend his service as an ambassador.

Mr. Hormel received a doctorate degree from the University of Chicago Law School. He served there as a dean of students. He is a member of the Board of Managers of Swarthmore College, from which he graduated.

Mr. Hormel is a committed philanthropist and public servant. He serves as chairman of the Equidex Corporation and has donated millions of dollars to some of the most important charities in America. They include the Virginia Institute on Autism, the Catholic Youth Organization, the American Indian College Fund, United Negro College Fund, and the Jewish and Children's Family Services. In recognition, he has received numerous awards and was named Outstanding Philanthropist by the National Society of Fundraising Executives.

He is a member of the board of directors of the San Francisco Symphony, the San Francisco Chamber of Commerce, the Human Rights Campaign, and the American Foundation for AIDS Research. He is founding director of the City Club of San Francisco, a club created to bring together community leaders of diverse backgrounds.

Mr. President, as the Secretary of State, Secretary Albright, said, ''. . . Mr. Hormel has demonstrated outstanding diplomatic and leadership skills. He will be an excellent United States Ambassador to Luxembourg.''

Mr. President, what else could this Senate ask of a nominee to be an American Ambassador, with leadership in corporate fields, in civic pursuits, a philanthropist, a leader of great American universities? What other American Ambassadors have better backgrounds, proven community service, or come with higher praise? This isn't about Mr. Hormel's qualifications. It isn't about his ability to serve as an Ambassador. This has become a referendum on Mr. Hormel's lifestyle, the most private intimate matters of his sexual orientation.

It is said by some colleagues in this institution who stand in opposition to his nomination that his lifestyle is inappropriate and that he is representing a country that is overwhelmingly Catholic. They failed to note, indeed, that the country of Luxembourg itself has spoken favorably of Mr. Hormel's potential service as our Ambassador.

My colleagues know that Mr. Hormel has spoken candidly about his potential service in Luxembourg and has made clear that he will not use his position to advocate his own views or his own private agenda. Indeed, my colleagues know that American Ambassadors are appointed and confirmed to serve solely the interests of the U.S. Government. Whether it is their political views, their religious views, or their sexual orientation, the advance of any of those opinions would be inappropriate by an American Ambassador. They serve in this position for one purpose and one purpose only: to advance the views of the U.S. Government.

Yet, Mr. Hormel, like Patricia Harris before him, stands in a historic position, potentially being confirmed by the U.S. Senate, and has made pledges which should be unnecessary—indeed, are unprecedented—and made several pledges to this institution:

First, to limit his charitable giving to 501(c)(3) organizations and to only donate through private foundations that do not bear his name. He doesn't have to do so, but he has.

He has pledged to prohibit any organization from using his name as a fundraising tool. He doesn't have to, but he made this pledge.

He has pledged to remove his name from any fundraising or charitable activities conducted by outside organizations.

He has pledged to resign from all boards of directors, except Swarthmore College and the San Francisco Symphony.

Yet, critics of Mr. Hormel argue that he is somehow out of step with American life or American values.

Mr. President, it is Mr. Hormel's critics who are out of step with American values. A fundamental principle of this country is that everyone has an opportunity to serve, that everyone is accepted and judged based on their ability to contribute. Mr. Hormel asks to be judged only by that standard.

Mr. President, through the years, from race to gender to religion to ethnicity, this Senate has had to deal with the painful questions of removing prejudice and learning to deal with people based on the content of character that all individuals face equally and fairly as they seek to serve our country. Mr. Hormel asks no more. He has a right to expect no less.

President Clinton has challenged this Senate to judge Mr. Hormel's nomination to be Ambassador to Luxembourg on its own merits. I hope in the great traditions of this institution we will give Mr. Hormel that chance.

Mr. President, I yield the floor.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 1708 TO AMENDMENT NO. 1676

(Purpose: To require that Federal surface transportation funds be used to encourage development and outreach to emerging business enterprises, including those owned by minorities and women, and to prohibit discrimination and preferential treatment based on face, color, national origin, or sex, with respect to use of those funds, in compliance with the equal protection provisions of the 5th and 14th amendments to the Constitution)

Mr. MCCONNELL. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL] for himself, Mr. GORTON, Mr. SESSIONS, Mr. HUTCHINSON, Mr. ASHCROFT, Mr. HELMS, and Mr. SMITH of New Hampshire, proposes an amendment numbered 1708.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

PRIVILEGE OF THE FLOOR

Mr. MCCONNELL. Further, Mr. President, I ask unanimous consent that Melissa Laurenza, an intern on my staff, be granted floor privileges during the consideration of the amendment that is pending at the desk.

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

Mr. MCCONNELL. Mr. President, I rise today to introduce my amendment to bring the federal highway program into compliance with the Constitution and with the recent landmark case of Adarand versus Pena.

According to the Congressional Research Service, the federal government currently runs approximately 160 preference programs that hand out jobs and contracts based on race and gender. Congress now has an historic opportunity to take a small step toward equal protection for all citizens by ending one of these 160 preference programs.

As the Senate seeks to put a new transportation bill into play, we must allow the costly and divisive ISTEA quota to go into retirement.

ISTEA mandates that ''not less than 10 percent'' of federal highway and transit funds be allocated to ''disadvantaged business enterprises'' (''DBEs''). Firms owned by officially designated minority groups are presumed to be ''disadvantaged.'' The government has placed the stamp of ''disadvantage'' on groups with origins ranging from Tonga to Micronesia to the Maldive Islands.

And, Mr. President, what is the reward for these government-preferred firms? The reward is a $17.3 billion quota. In other words, if the government decides that you are the preferred race and gender, then you are able to compete for $17.3 billion of taxpayer-funded highway contracts. But, if you are the wrong race and gender, then—too bad—you can't compete for that $17 billion pot.

Frankly, I am astonished that any Member of this Senate would ever think such a provision is fair, prudent, or constitutional. In fact, the courts have clearly decided that this $17 billion quota is neither fair nor constitutional.

RESPECT FOR THE CONSTITUTION

First of all, Mr. President, the Constitution requires that we end this race-based quota. ISTEA's racial presumption was specifically addressed in the recent landmark case of Adarand versus Pena, where the Supreme Court found that the presumptions subjected individuals to unequal treatment under the law. The Court ruled that the presumption was unconstitutional—unless the government could establish that the race-based program was narrowly tailored to meet a compelling governmental interest.

Let me repeat. That is the test, Mr. President, narrowly tailored to meet a compelling Government interest.

The court held—and it is illustrated here on this chart, straight from the opinion, that: ''. . . Section 1003b of ISTEA . . . and . . . the regulations promulgated thereunder . . . are unconstitutional.''

The court specifically ruled on this program—yet somehow it is still in the bill—that it is unconstitutional.

Mr. President, I don't need to remind everybody that when we first came to the Senate, we took an oath right down here at the front of the room. And we said, ''I do solemnly swear that I will support and defend the Constitution of the United States.''

So, Mr. President, on the one hand we have a Supreme Court decision striking down this set-aside in the highway bill and, on the other hand, we have the oath that we took to uphold the Constitution.

Mr. BAUCUS. Mr. President, will the Senator yield for a point of clarification?

Mr. MCCONNELL. Let me finish my statement.

Mr. BAUCUS. Just so that the people watching know what the facts are here, I was going to ask the Senator, is that quote on that chart the Supreme Court statement, or is that not the Supreme Court statement—that quote?

Mr. MCCONNELL. It is a decision of a district court. But it is a finding of the district court, upon remand of the Supreme Court declaring that very standard unconstitutional, and sent it back down to the district court which said we looked at it based upon the Supreme Court decision and we found it unconstitutional.

Mr. BAUCUS. That is not the words of the Supreme Court.

Mr. MCCONNELL. I thank my friend from Montana and look forward to debating him on this important issue over the next 8 hours and 45 minutes.

First of all, Mr. President, the Constitution requires that we end this race-based quota.

ISTEA's race presumption was specifically addressed in the case I just referred to where the Supreme Court found that the presumptions subjected individuals to unequal treatment under the law. The Court ruled that the presumption was unconstitutional unless the Government, as I said, could establish that the race-based program was narrowly tailored to meet a compelling Government interest. That is the test.

This past summer, the district court in Colorado, as I just indicated to my good friend from Montana, followed the Supreme Court's lead and found that the Government, in fact, could not meet the Supreme Court's test.

Specifically, the district court ruled, as in the chart that I referred to—and if I said the Supreme Court, I stand corrected—the district court ruled, as I just referred to the chart, section 1003(b) of ISTEA and the regulations promulgated thereunder are unconstitutional.

The court went on to declare that the Government was precluded from the use of percentage goals found in and promulgated pursuant to ISTEA.

It could not be more clear that the Supreme Court set up the standard, sent it back down to the district court, they applied the standard, and found this provision unconstitutional.

It is now incumbent upon the legislative branch to bring ISTEA into compliance with Adarand and the Constitution. That is precisely what my amendment does, plain and simple. It prohibits the highway program from engaging in discrimination or preferential treatment based on skin color and gender.

In fact, as I indicated earlier, we all remember how we began our careers here by swearing to uphold the Constitution. Here is a clear example of a legislative provision that has been litigated, been found unconstitutional, and, surprisingly enough, is still being proposed to continue as part of the law of the land.

So we have, on the one hand, the courts telling us loud and clear that ISTEA's racial preferences are unconstitutional and, on the other hand, our own public oath to uphold, support, and defend the Constitution. We have little choice but to comply with the unambiguous, unequivocal mandate of the courts and end this unconstitutional race-based program.

Every time the Government hands out a highway contract to one person based on race or gender, it discriminates against another person based on race or gender. Michael Cornelius recently spoke poignantly to this point before the Constitution Subcommittee over in the House of Representatives. He explained that his firm was denied a Government contract under ISTEA, even though his bid was $3 million lower than the nearest competitor—$3 million lower. Mr. Cornelius' bid was rejected because the Government felt that the bid did not use enough minority- or women-owned subcontractors.

If you think that ISTEA's quota is only a goal, just ask Michael Cornelius. The Cornelius bid proposed to commit 26.5 percent of the work to firms owned by minorities and women. Yet 26.5 percent was not enough, in the world of so-called ''goals and timetables.'' These goals and timetables are more appropriately called quotas and set-asides. You see, the combined Federal, State, and local goal under ISTEA was 29 percent, and Mr. Cornelius' 26.5 percent did not perfectly match the Government's so-called goal, and thus the Government awarded the contract to the highest bidder—the highest bidder, Mr. President.

Do you know how much the winning bidder proposed to contract to minority firms? I'll bet you can guess. I'll tell you how much work the winning bid promised to funnel to preferred firms—29 percent. Surely that is a coincidence, that the winning firm met the so-called goal exactly, right on the point. But, you know, the average person would hear this story and conclude that 29 percent is not merely a goal. The average person would conclude that this so-called goal is really a quota, and that is, in fact, precisely what it is. It is a race-based quota and it is unfair, unconstitutional and, frankly, just plain un-American.

So here we have the Government committing racial and gender discrimination and paying $3 million extra just to do it. Let me repeat. We have the Government committing racial and gender discrimination and paying $3 million extra just to do it. The message to Mr. Cornelius, his wife, his children and his employees, over 80 percent of whom are women and minorities, is: Sorry about the discrimination against all of you, but the Federal Government requires it. The Federal Government requires the discrimination. Mr. Cornelius has publicly challenged Congress to give contracts to the lowest bidder and spend the excess millions of dollars in ways that will actually help low-income minorities, and that is exactly what my amendment proposes.

This story of unfairness and discrimination is only one of the many, many stories that result from the unconstitutional ISTEA quota mandate. It is important to remember, as we debate this amendment, that discrimination by any other name is still discrimination and it strikes at the very core of the person being discriminated against.

Next, respect for our States and our cities compels Congress to end the ISTEA quota. More and more States are being forced to choose between court decisions, on the one hand, that order the termination of preference programs, and, on the other hand, Federal Department of Transportation officials who order them to promote preference programs as a condition for receiving Federal aid. So here we have it, a situation in which a State or a city is caught between a court decision saying you cannot do this anymore and a Federal Department of Transportation saying you must do it or you cannot have any money. The administration would have the American people believe that Adarand is only one decision by one court. It is much more than that. It is a landmark Supreme Court decision and is now the law of the land. Moreover, it is part of a widespread series of recent court orders striking down preferences.

According to the Congressional Research Service, the Adarand decision ''largely conforms to a pattern of Federal rulings which have invalidated State and local government programs to promote minority contracting in Richmond, San Francisco, San Diego, Dade County, FL, Atlanta, New Orleans, Columbus, OH, Louisiana, and Michigan, among others.'' And new challenges continue to be filed. Congress must act now to allow cities and States to get out of this constitutional crossfire that they are caught between: On the one hand, courts saying you cannot operate that way anymore and, on the other hand, the Federal Department of Transportation saying you must operate that way.

I pointed out in some detail the very real human and societal costs of ISTEA's racial preferences. Let me also point out that ISTEA has serious financial costs for our country. Every time the Government ignores the lowest bidder and pays more for a highway contract based on race, it costs the taxpayers real and substantial dollars. As I pointed out in Mr. Cornelius' case, the cost was $3 million. But there is a global cost as well. Based on a 1994 study by the General Accounting Office, ISTEA's racial preferences over the next 6 years will cost the Nation $1.1 billion in unnecessary construction costs. And that doesn't even include the administrative costs of running the program, certifying firms as officially preferred every single year, and then running an elaborate enforcement scheme to ensure that everybody meets the racial quotas on every transportation contract.

Also, that $1 billion does not include litigation costs. As I pointed out, racial contracting programs are being struck down all across the country and more cases continue to be filed. State governments and the Federal Government are being forced to spend countless dollars defending plainly unconstitutional race-based quotas. So, let me reiterate. We are authorizing a bill that not only requires discrimination, it wastes over $1 billion of taxpayer money by ignoring low bidders and funneling contracts to persons who are of the officially approved race and gender.

The Federal Government ought to take the lead in ensuring that all citizens are given opportunities without regard to race, color, national origin, or gender. In that spirit of equality and entrepreneurship, my amendment displaces the race-based Disadvantaged Business Enterprise Program with a race-neutral Emerging Business Enterprise Program. So let me make sure everybody understands. My amendment replaces the race-based Disadvantaged Business Enterprise Program with a race-neutral Emerging Business Enterprise Program.

My amendment requires every State that receives Federal highway dollars to take concrete and specific action to enable emerging businesses to compete for highway contracts and subcontracts. For example, States will be required to maintain a directory of emerging business enterprises and specifically provide outreach and recruiting for highway contracts. The bill also requires targeted outreach and recruiting of emerging businesses owned by women and minorities. Finally, States will be required to provide technical services and assistance on critical issues such as bonding, lending, and general business management, including estimating and bidding practices.

This amendment requires a major outreach effort to make sure that people understand how to compete for business. The emerging business enterprise amendment offers genuine opportunity for substantive business development of all emerging businesses, regardless of race or gender. The emerging business enterprise program will allow small businesses to learn how to compete instead of simply developing a destructive dependence on bid preferences.

One example of the destructive tendency of preferences comes from a very thoughtful book entitled, ''The Affirmative Action Fraud.'' In that book, Clint Bolick explains that the Rocky Mountain News recently tracked 100 companies that received contracts in 1985 under the city of Denver's racial preference program. Denver's minority contracting program required that a certain percentage of all contracts had to be funneled to minority-owned firms. Ten years later—that was in 1985—10 years later, 42 minority firms had gone out of business, 34 were still dependent on this supposedly temporary program, and only 24 were still in business and actually independent from the program.

In point of fact, the current DBE program has a dismal graduation rate. According to a GAO study, between 1988 and 1992, fewer than 1 percent of the DBE firms graduated from the DBE program. The General Accounting Office reviewed six States to see how the States were preparing DBEs to compete. In 1992, those 6 States had 4,717 certified disadvantaged business enterprises. Out of those, 4,717 DBEs, only 17 graduated—17 out of 4,717. And most of the DBEs had been in the program at least 3 years and apparently had learned very little.

The EBE program is a much needed replacement of the failed and unconstitutional DBE program. Even the Department of Transportation has conceded that the Disadvantaged Business Enterprise Program does not prepare minority businesses to compete in the real world. On May 30 of last year, DOT acknowledged the low graduation rates of its firms and conceded in the fine print of the Federal Register that, ''The DBE program does not provide for an encompassing business development program.''

In short, all Federal contracting programs should meet a four-pronged test. They must be constitutional, colorblind, merit-based, and inclusive—constitutional, colorblind, merit-based, and inclusive. My race-neutral amendment will ensure that the Federal highway program passes this test.

It is time to end the divisive discriminatory practice of awarding highway and transit construction contracts based on race, gender and ethnicity of a company's ownership. Respect for our Constitution, our courts, our States, and our individual citizens demands no less.

It is time to move beyond racial quotas and set-asides and focus our national effort on improving the ability of small businesses, especially those who are women and minorities, to compete through genuine outreach and business development—genuine outreach and business development, and that, Mr. President, is what this amendment would do. It would take

out the clearly unconstitutional Disadvantaged Business Enterprise Program, which is not only unconstitutional, but a conspicuous failure, and replace it with a race-neutral emerging business enterprise program that complies with the Constitution and can succeed.

Mr. President, I will stop at this point and inquire as to how much time I have remaining.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator has 3 hours 38 minutes remaining.

Mr. MCCONNELL. I yield to the distinguished Senator from New Hampshire whatever time he may need.

Mr. SMITH of New Hampshire. The Senator caught me a little bit by surprise. I appreciate the Senator yielding. I will take 3 or 4 minutes to make some comments, Mr. President, on behalf of my colleague's amendment.

Again, the Senator from Kentucky is out in front taking the lead on an issue which, when you look at it on the surface, appears to be the right thing, but when you look deeper, you know that it is not. Again, he has had the courage to take a lead on this.

This amendment would, I believe, end one of the most costly and unfair and unconstitutional, as the Senator from Kentucky has said, minority set-aside programs in our Federal Government. As the Senator has already said, ISTEA mandates that ''not less than 10 percent'' of Federal highway and transit funds be allocated to ''disadvantaged business enterprises.'' These are firms owned by officially designated minority groups presumed to be socially and economically disadvantaged.

The Senator from Kentucky already mentioned the Supreme Court case. In the 1995 case, the Supreme Court spoke on this issue in Adarand v. Pena. Senator MCCONNELL has gone into the details extensively, and I will not go back through it. But in that decision, as he has said, it is explained that not only the Supreme Court but a U.S. district court has ruled that this minority set-aside program is unconstitutional.

It does seem somewhat, I don't want to say odd, but maybe ironic that we on the floor of the Senate have to debate to take language out through an amendment a piece of legislation that has already been ruled unconstitutional. I don't know what that says about the process, but it does not sound very good to me that we have to do that.

It would seem to me that the logical thing to do would be to not have it in here; in other words, let's end this program and let's not have it in the legislation as we proceed. But it is there.

Plain and simple, this is an affirmative action program for contractors. The administration's attempt to comply with the Court's decision by fiddling around with the DOT regulations does not meet the constitutional litmus test. Therefore, it is now incumbent on the Congress to bring ISTEA into compliance with our Constitution.

We now have a major piece of legislation, i.e. the Intermodal Surface Transportation Efficiency Act, ISTEA, and in order to pass it, we have to bring it into compliance with our Constitution.

It is one thing for the Federal Government to carry out unfair quota-based programs, which most reasonable people oppose, but it is bordering on outrageous, if not outrageous in and of itself, to say that the Federal Government should now mandate these very same unfair quota-based systems on its face, which is exactly what is going on without the Senator's amendment.

This is a time-consuming, a very costly burden to the States. Some of the States, like my own State of New Hampshire, simply don't have, to be very candid about it, some of the significantly racial minority populations. So what happens is, it forces us into a position where we have to deal with the bureaucracy and twist and turn and try to jump through as many hoops as possible to meet that 10 percent DBE goal, which, as the Senator from Kentucky mentioned, is not good public policy. As the Senator well knows and has said—and I agree with him—the opportunity to gain employment ought to be based on merit, not be based on any type of quota.

So by continuing this and the other 150-plus, I might add, preferential treatment programs—150 other preferential treatment programs—we are encouraging businesses to tie their business strategies to unconstitutional programs. As I said, what does this say about our process here, that we are encouraging businesses to tie their business strategy to something that is unconstitutional? The Court has spoken; two courts have spoken. Let's listen to the courts. It is sending the wrong message to many people, whether it is constitutional students or whether it is simply the minority startup businesses that we are trying to help.

A better way, as the Senator has suggested, is to encourage minority entrepreneurs with a small business outreach program, which Senator MCCONNELL has in his amendment. It is a good amendment. This alternative will still provide assistance to smaller minority-owned businesses without the heavy-handed mandate upon our States.

Most Americans do not support preferential treatment programs, Mr. President, no matter where they come from or who they are supposed to help. We now have an opportunity to end one right here on the floor of the Senate, to end special preferential treatment. This is an opportunity to do that.

I urge my colleagues to do two things: One, to uphold the Constitution, which, with all due respect to my good friend, is more important than the McConnell amendment, but the language of the McConnell amendment should be the second reason we should support it. So support the Constitution and support Senator MCCONNELL and adopt the amendment. I yield to my colleague.

Mr. MCCONNELL. Mr. President, let me say to the distinguished Senator from New Hampshire, this is not exactly an isolated case. The Senator from New Hampshire mentioned that the trend in the courts—in fact, Richmond, San Francisco, San Diego, Dade County, New Orleans, Columbus, Louisiana and Michigan are all court cases striking down these kinds of preferences; in other words, striking down Government discrimination based upon race in general.

What is astonishing, I agree with my dear friend from New Hampshire, is that this is in this bill in the wake of the decision.

I wonder how long it is going to take, I ask my friend from New Hampshire, at this rate with every single aggrieved party having to sue, I wonder if my friend from New Hampshire has any sense of how long it may take to get these preferences off the books and bring American practice, Government practice into line with the Constitution.

Mr. SMITH of New Hampshire. A lot longer than the Senator from Kentucky and I would want it to take.

Mr. MCCONNELL. We probably won't be here.

Mr. SMITH of New Hampshire. I don't think so.

Mr. MCCONNELL. It is an astonishing development. I thank my good friend from New Hampshire for his important contribution.

Mr. President, I believe the Senator from Alabama is here and would like to speak as well. I yield him whatever time he may need.

Mr. SESSIONS. Mr. President, I thank Senator MCCONNELL. I say to Senator SMITH, we appreciate your comments and thoughtful insight into this very important subject for our Nation. We want to do the right thing with regard to all of our citizens. We want to have a nation in which civil rights are protected and where everyone has an equal opportunity to participate in the American ideal. It is a very, very important issue.

I thank Senator MCCONNELL for developing the kind of amendment that will accomplish, I think, the legitimate goals of those who would like to see more opportunity in contracting Federal road contracts while at the same time protecting the great constitutional privileges that all of us in this Nation have a right to count on.

I serve on both the Environment and Public Works Committee, from which this legislation came, and the Judiciary Committee. In the Environment and Public Works Committee, we had no hearings, took no testimony, did no study as to the advisability and the practicality of how these preferences work out in real life.

For a number of years, I was a U.S. attorney and had the opportunity to prosecute criminal cases of all kinds and sorts. I have a distinct recollection of a case involving a minority individual who had gotten, I think, a $250,000

contract primarily because he was a minority. He was not the low bidder. He got the contract because of the preference set-asides in this highway bill. He promptly turned around and subcontracted the entire contract work to another contractor, presumably not a minority contractor, who did all the work and, in fact, there were false statements made in the course of this situation, for which he was convicted. But there is a lot of abuse in which people put up individuals as straw people just to take advantage of this provision.

There are a lot of problems with the implementation of this act that I could talk about at some length. Fundamentally, I will say the bill is not good policy. It is not the kind of interference into the bid process that we ought to have in this country. But secondly, and most important, I will talk a few minutes about the fact that it is not only bad policy, but unconstitutional.

We had hearings in the Judiciary Committee on this subject, both before the full Judiciary Committee and before Senator JOHN ASHCROFT'S subcommittee. The House of Representatives Judiciary Committee has also had hearings on this, which is chaired by Representative CANADY from Florida, who is an eloquent spokesman on this subject, who has come to see, with absolute clarity, the unconstitutionality and the unfairness of the racial set-asides that we now have in this bill.

Let me say this: The McConnell bill is good. It is a good approach because it encourages new companies; it helps people get involved and get into business for the first time and gives them a lot of other advantages. We ought to do that. We ought to have outreach. We ought to have affirmative action. That is a good ideal for America. It is something that ought to be a part of our law insofar as it is appropriate to do so. But it is wrong to have quotas and set-asides.

We first started affirmative action on March 6, 1961. That was when President John F. Kennedy issued this order:

> The contractors will take affirmative action to ensure that applicants are employed and treated during their employment without regard to race, color, creed or national origin.

That is an ideal with which we can all agree. That is an ideal we can all support. It is something we ought to support and we ought to believe in in this Nation. But President Kennedy did not go as far as we have gone today, where we have actual set-asides that give preferences to one group of people on account of their race and denies a benefit or an equal opportunity to another individual on account of their race. That is what is objectionable about this legislation.

Let me just say, how did we get to this point? I have, I think, an idea about how we got to this point.

Most of us recognize and can remember that there was systematic discrimination against African Americans and other minority groups in this country as little as 30 years ago by law, in some instances. This was an unacceptable event.

When the courts dealt with that, whether it was a police department or a fire department or a State agency, they would enter remedial orders, and they would put demands on those agencies to take immediate steps to make up for the explicit discrimination that had been suffered in that agency or department. The courts have always affirmed that.

Somehow we slipped from these situations into generalized quotas as part of American law. That is a move which is not justified by policy or law, and the United States Supreme Court, and other courts, are beginning to make quite clear that it is unacceptable.

The people of California, with proposition 209, spoke quite clearly as to their view about it, and the courts have promptly affirmed proposition 209, even though this administration and the President of the United States filed a brief saying it was unconstitutional. The Ninth Circuit Court of Appeals ruled that there is no doubt that proposition 209, which prohibited these kinds of quotas and set-asides, was constitutional. I think that we have to deal with this issue because it will not go away.

I was present in the Judiciary Committee hearing when Mr. Pech, who was the chief operating officer of Adarand Constructors, testified. And I have done some research into the law. And I would like to share my thoughts with this body.

The Constitution requires all of us, not just judges, to uphold the Constitution. We swore an oath, as is on that chart to do just that. I believe section 1111 of the ISTEA legislation is clearly unconstitutional under the Adarand Constructors, Incorporated v. Pena case, the landmark 1995, Supreme Court decision.

Adarand involved the same program with the exact same language in this new authorization that was in the previous bill. That was the language the Supreme Court was dealing with and reviewed. In Adarand, the Court ruled all—all—governmental racial classifications, like the ones we have in this legislation, like the one it was considering in the Adarand case—the same language—are subject to the strictest judicial scrutiny.

The Court held ''federal racial classifications, like those of a state, must serve a compelling governmental interest and must be narrowly tailored to further that interest.''.

It ''must be narrowly tailored.'' There must be a compelling interest.

Now, some make the argument—and this is a matter we have heard a lot about recently—some make the argument that the Supreme Court did not strike down this program in Adarand. But I just say this. It did not uphold it, clearly. What they did was set a standard for the validity or invalidity of this program. And they referred the case back to the district court who tried it. And it gave that district court remand instructions. They remanded it, and they gave them instructions as to how they should evaluate whether or not this statute violated the Constitution.

Justice Scalia, who was on the Supreme Court, wrote in his concurrence:

> [i]t is unlikely, if not impossible, that the challenged program would survive under this understanding of strict scrutiny, but I am content to let that be decided on remand [by the district court].

Based on the instructions and the law, as set forth by the Supreme Court, it was not surprising that on remand the Federal district court properly ruled, on summary judgment, that this program, this set aside program, was unconstitutional. They left no doubt about the constitutionality of this program. The district court stated:

> I find it difficult to envisage a race-based classification that is narrowly tailored. By its very nature, such a program is both underinclusive and overinclusive.

Now, those are legal terms. Somebody might think, ''What does that mean, 'underinclusive' and 'overinclusive'?'' What the judge was saying simply: It is unfair. It overincludes people beyond who ought to be included; and when you do that, you underinclude people who have a right to be included in the bid process, and have a right to participate in these programs.

That is the fundamental constitutional wrong. It gives advantages to people who do not deserve it; and it is a disadvantage to people who do not deserve to be disadvantaged. That is a fundamental constitutional principle. It will not go away.

So the Court also enjoined, issued an order stopping the defendants from administering, that is, Secretary Pena, from administering section 1003(b) of the ISTEA.

So I would say to anybody who looks at this matter fairly and objectively, without hesitation, there is no doubt that under the current state of the law, regarding this specific statute, it has been declared unconstitutional by the courts of the United States.

Now, yes, they can appeal this district court ruling. But based on the plain holdings of the Supreme Court, which the district judge clearly followed in his opinion, I submit to you there is virtually no chance that it will be reversed. The Supreme Court of the United States cares about this issue. They care about making sure everybody in America has equal treatment. They want to see race relations in America improve, but they have studied it and they have thought about it.

The courts have fulfilled their responsibility, in my opinion. And what have they thought? And what have they decided? Our federal courts have looked down the long road into the future, and they have asked themselves: Will this Nation be better served if we allocate goods and resources and contracts based on the color of one's skin?

Is that a defensible policy for a nation to undertake? Can we do that? And they have concluded, no, you cannot, because when you do that you deny someone else an equal right to apply.

Other Supreme Court cases have rendered very similar opinions. Bush v. Vera, Miller v. Johnson, Shaw v. Reno, and Richmond v. J.A. Croson Co. all have subjected Government racial preferences and classifications to the strictest scrutiny. In each one of these cases, the Court has found these racial classifications unconstitutional.

Section 1111 simply reenacts, without change, the same statutory language that was invalidated in Adarand Constructors, Inc. v. Pena. Mr. President, section 1111 literally does not change one single word in the definition of ''socially and economically disadvantaged individuals''.

Both the previous ISTEA legislation and section 1111 refer to the exact same definition in the Small Business Act. This definition states—and I have the legislation here before me—it states that ''contractors shall presume that socially and economically disadvantaged individuals, including Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities or any other individual found to be disadvantaged by the administration under the Small Business Act, shall be presumed to meet the standard for socially and economically disadvantaged.''

So that is statute—the problem is not regulations. Some would say ''Well, you're quoting from regulations. They might change the regulations.'' This is the Small Business Act. That is specifically referred to in this highway bill to define what ''socially and economically disadvantaged individuals'' are. And it gives a racial preference. It says that a black individual is presumed to be socially or economically disadvantaged whereas a struggling white businessman may not.

So what we have here is an overtly racial Government classification. That is why the Supreme Court is concerned about it. Consequently, nothing in this reenactment does anything to strengthen the arguments that this section is constitutional. We, indeed, held no hearings on it.

Moreover, there is no legislative record to support this racial classification. The Environment and Public Works Committee did not hear any testimony concerning the constitutionality of this section or the regulations promulgated pursuant to its identically worded predecessor. The only hearings we had were in the Judiciary Committee, as I mentioned earlier.

Now, the Clinton administration suggests that the new regulations promulgated by the Department of Transportation somehow strengthen the case for the constitutionality of this provision. This, however, is a totally ineffective argument. Subsequent regulations simply cannot repair a statute that is, on its face, unconstitutional. It is difficult for me to see how anybody would argue otherwise. The courts have held—and I will read the opinion of the district judge here, the district judge, when he found this thing unconstitutional. He said:

''The statutes and regulations concerning the SCC program are overinclusive, and they presume that all those in the named minority groups are economically or, in some act and regulation, socially disadvantaged. This presumption is flawed.''

The Court held that both the regulations and the statute are unconstitutional. The statute is what the Supreme Court dealt with when it sent the district judge its instructions.

Finally, some suggest that the Adarand v. Pena decision does not render section 1111 unconstitutional. They point to the language of Justice O'Connor when she wrote in the opinion:

> We wish to dispel the notion that strict scrutiny is ''strict in theory but fatal in fact.'' The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and the government is not disqualified from acting in response to it.

So they say, ''Jeff, she just said what you say is not true. Adarand really did not close the door on this statute.'' But, Mr. President, these advocates do not read the very next sentence in Justice O'Connor's decision where she immediately explains this quotation. Justice O'Connor's next sentence cites, as an example, a State governmental agency that had been found to have been engaged in ''pervasive, systematic, and obstinate discriminatory conduct.'' All Justice O'Connor says in this passage is that proven, widespread, systematic discrimination can justify ''a narrowly tailored race-based remedy.'' In other words, a limited racial preference can be constitutional as a remedy for a proven case of specific governmental discrimination.

However, section 1111 is not a remedy for specific governmental racial discrimination. As I said earlier, there has been no determination in this case that the administration of the Federal Highway System is systematically and pervasively biased in its operation.

Mr. McCONNELL. Will the Senator yield?

Mr. SESSIONS. Yes.

Mr. McCONNELL. I was listening carefully to what the Senator from Alabama had to say. So the law is, as I understand what the Senator from Alabama had to say, that the remedy has to be narrowly tailored to meet actual past discrimination. Is that essentially the standard here the Senator from Alabama is talking about?

Mr. SESSIONS. That is correct. Such is the essential holding and the basic law of this country. Where you have systematic, proven discrimination, a court can issue a remedy that may provide advantages to one racial group who has been discriminated against.

Mr. McCONNELL. So that group, I say to my friend from Alabama, actually has to have suffered discrimination?

Mr. SESSIONS. Certainly.

Mr. McCONNELL. The Court was saying, you could not just carve out a big part of a program and hand it out to people based upon what color they are or what gender they are; is that correct?

Mr. SESSIONS. Absolutely. This is not a close question.

Mr. McCONNELL. I ask the Senator from Alabama, isn't that what we are talking about here, what, in fact, has been done in this bill that we are trying to remedy with this amendment?

Mr. SESSIONS. Precisely so. The Senator from Kentucky is precisely correct. He has gone straight to the heart of this matter and I think makes a good point.

You know, many of us go around, and we blame Federal judges for much of the litigation and problems and some of these ideas that many people say are liberal ideas. But in this case, I think it is the Congress that has been passing legislation that goes beyond its bounds and is being brought to task by the courts.

So, fundamentally, I just further state that Environment and Public Works Committee made no findings, we made no factual analysis of the interstate highway program in order to determine there is some sort of systematic discrimination ongoing that ought to be corrected. In fact, I think a good argument can be made that the objectivity and fairness of the bid process is virtually above reproach. So there is just no basis for this. That is why it has no chance, in my opinion, of ever passing Supreme Court muster. And this Congress ought not be passing a bill that is bad public policy and is unconstitutional.

Mr. President, I want to read a quote from Mrs. Valery Pech who testified on this subject. She is the wife of Mr. Randy Pech who owns Adarand Constructors. She is an owner herself, I believe. She said:

> We started our family-owned company in 1976 specializing in the installation of highway guardrail systems. In August of 1989, we lost yet another Federal highway contract on which we had submitted the lowest bid. Adarand lost this job and numerous others, past and future, not because of poor reputation, not because our price was too high, not because we limited our bid date, not for any other reason but one. Randy, as owner and operator of Adarand is a white male. We didn't like it. We fought the decision. We contracted a legal foundation to seek help. Six years later, in 1995, the Supreme Court ruled for us and against race-based decision-making in the Adarand Constructors case.
>
> Adarand is the only nonminority guardrail business in the State of Colorado. All our competitors are classified as disadvantaged business enterprises. Their status is DBE, and contracts are awarded based solely on the owner's race or gender regardless of whether or not they have suffered past discrimination.

She lists those competitors that they compete against. She notes all of these

contractors have been in business—her competitors are minority owned for over 10 years and have solid reputations for getting work done. These four competitors get 95 percent of their work by being low bidder in other than Government contracts; yet when they bid against Adarand for Government contracts, they get a preference and are able to get the bid, although they bid higher.

Do you see the unfairness of it? These are strong competitive companies. One simply happens to be headed by a Hispanic and one is not. The one who is not gets hurt, and the other one has an advantage. That is why the polls of all racial groups feel that these are not fair and just preferences.

Mr. President, I will not belabor the subject. Again, I want to congratulate the Senator from Kentucky for his leadership in coming forward with a remarkable proposal that gives opportunity, gives it affirmatively, reaches out to help disadvantaged, gives them a chance to be successful in getting Government contract work, but at the same time does not violate the Constitution.

In conclusion, I have no doubt that this section is unconstitutional. It is neither supported by a compelling Government interest nor is it narrowly tailored. Therefore, I urge the Senate to consider Senator MCCONNELL's amendment. I cannot in good conscience vote for legislation that I consider to be unconstitutional.

Mr. WARNER. Mr. President, I say to the distinguished Senator from Kentucky, I do not wish in any way to interfere in his presentation, but there are some of us who have a different point of view. I am wondering if I could just talk about 3 or 4 minutes on this amendment.

Mr. MCCONNELL. I say to my friend, that is fine. I have Senator ASHCROFT here in support of the amendment, and we will go to him when you complete.

Mr. WARNER. This will be a very thorough debate because it is a serious issue. It seems to me there are many facets to this debate. One is the important one raised by my colleagues who have just been speaking as to the constitutionality. Then each Senator has to reach his or her own opinion on the constitutionality. Then there seem to be other factors that have to be taken into consideration.

I rise to alert Senators to take a look at the importance of this amendment. It so happens this bill is mine. I was the author of it as chairman of the subcommittee. We considered this issue, and I determined we should keep this provision in, despite the Adarand case and the development of the law in the course of the writing of the bill.

I urge Senators to begin to study, as a part of their preparation for floor statements and decisions, the important aspect of this amendment on the growth of the participation by women in this country in their ability to compete as professionals in this area of work.

There are charts available; for example, in Virginia, the percent of growth since 1987 in firms of women, an 84 percent increase in the number of firms that are managed, owned, and operated by women in my State. Each State is on this chart. I urge Senators to look at that.

Then the department of Federal highways, DOT, has prepared for each State a chart showing the percentage of these DBE highway contracts that go to women. Particularly in my State, 44 percent of these contracts under the DBE Program go to firms that in this instance are nonminority women—a very significant amount of work.

Another chart that Senators should look at is a comparison of the Federal highway programs that have been since 1983 subject to the DBE provisions, and the participation by the minority firms in the Federal program as compared to the participation in State programs. My State is not on this particular chart, but, for example, I will take Connecticut, 15.7 percent participate under the Federal program; 5.2 percent under the State program. Arkansas, 11.9 percent under the Federal programs; 2.9 percent under the State programs. I will let the distinguished Senator from Rhode Island address this chart; 12 percent in Rhode Island under the Federal program; 0 percent under the State program. Maybe there is some explanation.

I just rise to alert Senators to include this as part of their study.

Mr. President, some have made statements to the fact that the DBE Program has not been effective. I want to address—and indeed rebut—that point.

Let's look at the effect on women-owned highway contracting businesses. The effect has been dramatic. Since 1987, when women were added to the DBE, women-owned highway contracting businesses increased in number by 157 percent.

And women-owned businesses get a significant portion of the DBE funds. Here are some examples:

Alaska: 75 percent of DBE funds go to women ($11.8 mil. of $15.7 mil.)
Indiana: 68 percent of DBE funds go to women ($21.5 mil. of $31.5 mil.)
Mississippi: 87 percent of DBE funds go to women ($19.5 mil. of $22.4 mil.)
New Hampshire: 63 percent of DBE funds go to women ($6.0 mil. of $9.6 mil.)

and in my State of Virginia 44 percent of DBE funds went to women ($14.1 mil. of $32.6 mil.).

In sum, the DBE Program has helped promote women's participation in the construction industry, and will continue to do so under this bill and the new regs.

Without this program, it is questionable that women would have this opportunity. Let's compare some State programs—without DBE—and their Federal aid programs:

	Federal (DBE)	State (No DBE)
Arkansas	11.9	2.9
Louisiana	12.4	0.4
Missouri	15.1	1.7

I believe data like that shows that DBE plays a critical role in allowing women to compete. This is not a giveaway; they must still be the low bidder, obtain bonding, and perform the contract according to its terms.

The case for opportunities for minorities is equally clear. Thanks to the DBE Program, persons of all race and ethnicity have had the opportunity to compete for federally assisted State highway contracts.

With regard to the debate about the constitutionality of this program, I reviewed what the Supreme Court said in the Adarand case.

Justice O'Connor, for the majority, made it clear that the Federal Government may undertake affirmative action programs as long as they meet the ''strict scrutiny'' standard. The Court did not outlaw Federal affirmative action.

Indeed, Justice O'Connor stated:

> When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the ''narrow tailoring'' test . . .

As for the district court, to which the case was remanded, Judge Kane's decision did not ban affirmative action either.

When Judge Kane looked at the program, he said:

> I conclude Congress has a strong basis in evidence for enacting the challenged statutes, which thus serve a ''compelling governmental interest.''

In other words, the program achieves one of the two ''strict scrutiny'' requirements.

As for the second requirement of ''narrow tailoring,'' U.S. District Judge Kane stated the program's regulations did not meet that requirement.

But given that the Department of Transportation is readying new regulations that are specifically designed to meet the narrow tailoring requirement, it seems to me that that problem is going to be taken care of.

In sum, the DBE Program will be in full compliance with *Adarand.* Indeed, as the chairman of the Subcommittee on Transportation, I intend to make sure of that and hold the Department to that standard.

Therefore, I believe that the DBE Program in this bill is both critical to opportunities for women and minorities in the highway construction industry, and constitutional. It is a program important to a wide range of socially and economically disadvantaged persons, including many in the State of Virginia. Thus, I will be supporting the committee bill and opposing the pending amendment.

Mr. President, I ask unanimous consent that two tables be printed in the RECORD relating to this subject matter.

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

HIGHWAY CONTRACTING DOLLARS IN VIRGINIA

Year	Federal-aid dollars awarded $(1000)[1]	Federal-aid dollars to DBEs $(1000)[1]	Annual DBE goal percentage	Actual DBE participation percentage
1991	142,821	23,036	12.0	16.1
1992	131,660	20,903	12.0	15.9
1993	197,956	31,915	12.0	16.1
1994	322,354	48,754	12.0	15.1
1995	220,010	32,688	12.0	14.9
1996	246,195	32,633	10.0	13.3

[1] Contracting dollars awarded by the State for the Federal-aid highway program, not the annual apportionment.

Women and Minority-Owned Businesses Share of the Federal Highway Program: In 1996, businesses owned by non-minority women received $14.1 million (or 5.7% of total contracting dollars awarded) and minority-owned firms received $18.5 million (7.5%). Non-DBEs got the remaining 86.8%.

DBE Firms Ready and Able to Perform Highway Construction Work: There are 458 DBEs qualified as prime contractors in the highway construction industry in Virginia. The State reports that there are more qualified DBE firms than non-DBE firms.

Without DBE Programs Prime Contractors don't use DBE Subcontractors on State Contracts: In 1996, DBEs were successful as subcontractors in the federal-aid program, but there was a 34% drop in the use of DBE subcontractors in the state program.

WOMEN-BUSINESS-STATES 1996 STATISTICS

A state-by-state listing of the number of all women-owned companies in 1996 (in thousands) and the percentage change from 1987, as compiled by the National Foundation for Women Business Owners:

State	Firms in 1996	Percent of growth since 1987
Alabama	98,000	87.9
Alaska	26,000	69.6
Arizona	130,000	97.3
Arkansas	68,000	76.0
California	1,082,000	77.7
Colorado	160,000	64.9
Connecticut	103,000	56.2
Delaware	21,000	95.8
District of Columbia	19,000	59.2
Florida	497,000	106.3
Georgia	203,000	112.4
Hawaii	39,000	66.8
Idaho	42,000	104.1
Illinois	37,000	74.8
Indiana	167,000	71.0
Iowa	92,000	58.6
Kansas	84,000	43.5
Kentucky	99,000	70.1
Louisiana	102,000	67.7
Maine	48,000	85.3
Maryland	167,000	87.7
Massachusetts	192,000	58.5
Michigan	263,000	80.4
Minnesota	166,000	73.5
Mississippi	55,000	73.9
Missouri	155,000	62.1
Montana	34,000	76.7
Nebraska	57,000	63.3
Nevada	47,000	130.0
New Hampshire	42,000	69.6
New Jersey	221,000	72.7
New Mexico	57,000	108.0
New York	527,000	70.2
No. Carolina	198,000	94.3
No. Dakota	19,000	37.8
Ohio	306,000	82.5
Oklahoma	107,000	54.3
Pennsylvania	300,000	74.7
Rhode Island	29,000	84.8
So. Carolina	90,000	93.8
So. Dakota	24,000	65.2
Tennessee	139,000	89.9
Texas	552,000	70.1
Utah	63,000	95.5
Vermont	29,000	94.3
Virginia	189,000	84.0
Washington	188,000	91.8
West Virginia	40,000	64.6
Wisconsin	134,000	78.5
Wyoming	19,000	63.7
United States	7,951,000	77.6

Note.—The growth rate in women-owned construction contractors since 1987 was 157% (2.6%–6.7%).

I yield the floor.

Mr. McCONNELL. Mr. President, if the Senator from Montana would like to rotate back and forth, that is certainly fine with me. Senator ASHCROFT has been here and is anxious to speak. I don't particularly want to get into a dispute over the speaking order. Is the Senator from Montana desiring to speak?

Mr. BAUCUS. I have another commitment that starts in about 5 minutes, so if I could speak now that would help this Senator.

Mr. McCONNELL. I yield the floor.

Mr. BAUCUS. I yield myself such time as I may consume.

Mr. President, this obviously is a very important debate. It is the first civil rights debate we have had in a long time. It is very important that the Senate take this extremely seriously because it is such an important matter. It goes to the heart of what it is to be an American.

I begin by emphasizing a fact which puts us into a bigger context, and that is all of us as Americans want to expand the economic pie. We all want to encourage more American entrepreneurs to start new companies, start more companies, create new jobs. That is especially true for women and for minorities.

We, as Americans, will all be a lot better off and the country will be better off if there are more successful businesses owned by women, more owned by African Americans, more owned by Native Americans. All Americans, as a consequence, will have more jobs, will have more community leaders and will have more positive role models for our daughters and our sons. We will be a more cohesive country, a better country. I don't think there is any doubt about that. I think there is a consensus about that.

The question, of course, is how we can best accomplish that goal. The so-called DBE Program, the Disadvantaged Business Enterprise Program, takes an important step to accomplish that objective by giving women and by giving minority groups a fair shot at that economic opportunity. It gives them a seat at the table.

I will take a few moments to explain the program. First, it was created in 1982 as part of the highway bill signed by President Reagan. It began in 1982. It was then expanded in 1987 when the Senate added women-owned construction businesses to the category of businesses that are presumed to be disadvantaged.

Let me emphasize this point: The program we are talking about is based on the small business program usually referred to as the section 8 program. But it is broader than section 8. In 1987, we expanded the highway Disadvantaged Business Enterprise Program to include not only construction companies owned by members of minority groups but also construction companies owned by women. The expanded program was continued without change in ISTEA. That is, in the highway bill passed in 1991, and the committee has here proposed to continue it again in ISTEA II, the highway bill before the Senate.

How does the program work? The law says unless the Secretary provides otherwise, at least 10 percent of the money expended on highway contracts under the official highway program should go to small businesses owned by socially and economically disadvantaged individuals. So who qualifies? First, you have to be a small business within the meaning of the Small Business Act. Beyond that, you have to be socially and economically disadvantaged. There is the presumption that women and members of certain minority groups are in fact disadvantaged. It is only a presumption, a presumption that can be overcome primarily in two ways. One is that a person who is not a member of one of the presumptive groups can show he or she is socially or economically disadvantaged. That can be shown. The other way is for a third party to challenge the eligibility of a particular contractor, such as a competitor, by showing that the person is not, in fact, disadvantaged.

Under our Department of Transportation regulations, each State—let me underline the word ''State''—each State highway program must take various steps to reach out to disadvantaged businesses. In addition, each State—underline again ''State''—must establish an overall goal for the percentage of federally funded highway construction dollars going to women and minority-owned businesses. Once that goal is established—again, it is a goal; some States have more than 10 percent; some States goals are lower than 10 percent. It is a goal depending on the State. Once the goal is established, the State highway department establishes another goal for each particular contract. The goal doesn't have to be 10 percent; instead the State can look at the type of work, and the pool of available subcontractors and decide to set a higher goal for certain contracts and a lower goal for others.

Once the goal is established for a contract, each contractor must make a good-faith effort to meet the goal—not mathematically required, not quota required, but a good-faith effort to meet it. That is all that the program is. If the contractor does make a good-faith effort but finds the qualified subcontracts are not available or that their bids are too high, the contractor has satisfied his obligation. In a nutshell, that describes the program.

So how has it worked? What are the results? The program has been in place now for about 15 years. During that time, the percentage of Federal highway expenditures going to disadvantaged businesses has risen from barely 8 percent in 1992 to almost 15 percent today. In my State of Montana, 1996, the State expended $133 million on ISTEA or highway projects. Of that, $27 million—slightly more than 20 percent—went to DBE's.

To companies like Omo Construction in Billings, MT—Ron Omo started out

with a pick up, that is all he had, and the will to be his own staff. He was certified as a DBE in 1986. In 1997 his company received $4 million in prime contracts and subcontractors.

Or Greenway Enterprises, in Helena, which is run by Dee Hoovestall, who started out with a backyard seeding company and now runs a large construction company in my State.

There are others, people who have created jobs and improved our communities. With that as background, I would like to respond to the principal criticisms that have been made of the Disadvantaged Business Enterprise Program.

Three points: First, the program is constitutional; second, the program is fair; and third, it works.

It has been argued that the Disadvantaged Business Enterprise Program is unconstitutional. I disagree. There are important constitutional questions, and they deserve careful attention, but when you look at the decision of the Supreme Court, the decisions of the district court, and the new proposed regulations, the program passes constitutional muster.

Let's start with the decision of the Supreme Court. In the Adarand decision, the Supreme Court held that a Federal affirmative action program is subject to what the lawyers call ''strict scrutiny.'' In other words, to pass constitutional muster, the Government must show that the program furthers a compelling interest—and that is a given in this case; the lower court even found that—and also uses a narrowly tailored means to do so. Strict scrutiny means compelling Government interest and, second, that the program is narrowly tailored.

The Supreme Court did not hold that the program was unconstitutional. Again, the Supreme Court did not hold that the program was unconstitutional. Nobody can refute that statement.

In fact, the Court went out of its way to say that subjecting the Federal affirmative action program to strict scrutiny was not equivalent to finding that the program is unconstitutional.

In a majority opinion, Justice O'Connor said:

> We wish to dispel the notion that strict scrutiny is ''strict in theory, but fatal in fact.'' . . . the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it. . . .

The Court gives some examples and then it says:

> When race-based action is necessary to further a compelling interest, such action is within the constitutional constraints if it satisfies the ''narrow tailoring'' test this Court has set out in previous cases.

Having established that strict scrutiny applies, the Supreme Court remanded the case so that the lower court could consider whether the program furthers a compelling interest and is narrowly tailored.

The district court judge issued its opinion in June of last year. It is a mixed bag.

After reviewing the legislative history, the judge found that ''Congress had sufficient evidence, at the time these measures were enacted, to determine reasonably and intelligently that discriminatory barriers existed in Federal contracting.''

Therefore, he concluded that ''Congress has a strong basis in evidence for enacting the challenged statutes'' and that the program was justified by a compelling Government interest. That was the district court speaking.

Then the judge turned to the second part of the test, narrow tailoring.

Looking at the details of the Federal lands highway program, he concluded that it was not flexible enough or sufficiently related to past discrimination to meet the narrow tailoring test. Therefore, because the program did not pass both parts of the strict scrutiny test, he held as a district court judge that it was unconstitutional.

Let me make three points about this decision.

First, the decision itself applies only to the Federal lands highway program in Colorado.

Second, a single district court's decision that a Federal statute is unconstitutional is, obviously, not the last word. Such decisions frequently are reversed on appeal, and this decision has been appealed.

In fact, there are many law professors who have written that, in their view, the district court decision that the statute is unconstitutional is in error.

Third, the court was looking at the current program. But that program is changing.

A few years ago, President Clinton ordered a review of all Federal affirmative action programs. In response, Secretary Slater has proposed significant changes to the DBE Program, designed to make the program more flexible, more targeted, and, in a nutshell, more narrowly tailored. The proposed new rules would make several important changes.

First, they replace the 10 percent goal with a new goal that's based on an estimate of the extent to which discrimination has affected construction contracting in each State. Again, no numerical goal.

Second, they give more emphasis to incentives like outreach and technical assistance.

Third, they confirm that contract goals are not binding. If a contractor makes a good-faith effort to find qualified women or minority-owned subcontractors, but fails to meet the goal, there is no penalty. If you do your best, that is good enough.

Moreover, the regulations allow the Secretary to waive the requirements if a contractor comes up with an alternative approach that is as good or better then the approach in the rules.

Putting all this together, the Supreme Court held that the program is subject to strict scrutiny, but emphasized that it does not mean that the program is unconstitutional.

The only district court to consider the question held that there is a compelling interest, but not narrow tailoring. The proposed new rules directly address narrow tailoring by making the program even more flexible and targeted. In light of this, I believe that the DBE Program is constitutional.

My second point is that the program is fair. It's fair because it helps women and minorities get a seat at the bidding table—not the only seat, not the best seat, but simply a seat at the table, an opportunity to compete against equally qualified contractors.

Let's face the facts. We all wish we lived in a society that does not discriminate based on gender or race. Well, we don't. Women and members of minority groups do face barriers that the rest of us do not. That is why the DBE Program was created. That is why it was expanded in 1987 to include women.

Let me give you an example. In 1984 the Transportation Subcommittee held an oversight hearing to review the implementation of the 1982 highway bill. A woman named Wendy Johnson testified about the discrimination in the construction industry. She said:

> Few, if any, of the major contractors of State departments of transportation are making aggressive, affirmative efforts to recruit women . . . Yet, we have documented that many women want and need these jobs.

Let me make a point about discrimination another way. Look at the statistics. Women still earn only 72 percent of what men earn for comparable work. Women own about one-third of all small businesses. But women-owned businesses only receive 3 percent of Federal procurement dollars. Minorities make up 20 percent of the U.S. population but own only 9 percent of the construction businesses, and those businesses receive only 4 percent of construction receipts.

According to the General Counsel of the Transportation Department, ''Minority and women-owned firms report that they are routinely unable to secure subcontracts on private work where there are no affirmative action requirements and that white-owned prime contractors reject minority or women-owned firms even when they offer the lowest bid.''

The DBE Program helps women and members of minority groups overcome these barriers. That is why, to my mind, the program is fair.

My third point is that the disadvantaged business——

Mr. WARNER. If the Senator will yield, I think that is a very important point, and it supplements what I brought to the attention of the Senators earlier. They better do a little homework on this issue as they approach this particular amendment.

Mr. BAUCUS. That is a very good point, particularly as to how much this has helped women become an equal force in this society—or getting there.

Third, the Disadvantaged Business Enterprise Program works. After the program went into effect, the percentage of highway expenditures going to disadvantaged businesses rose significantly, from 8 percent in 1982 to 12.9 percent in 1983. It has remained pretty stable ever since.

The percentage of expenditures going to women-owned businesses has risen steadily, from 3.1 percent in 1983 to 6.7 percent in 1996. That is still pretty low. After all, women make up more than half of the population and own one-third of all small businesses. Maybe 6.7 percent is nothing to crow about, but it's more than double the percentage of expenditures that went to women-owned businesses in 1983, before women were added to the DBE Program.

We can look at it another way. What would happen if this program were repealed? In recent years, several States have eliminated their own disadvantaged business enterprise programs, and the results have been dramatic.

In 1989, Michigan repealed its disadvantaged business enterprise program for State highway contracts. Within 9 months, the percentage of highway dollars going to minority-owned businesses fell to zero. The percentage of highway dollars going to women-owned businesses receiving highway contracts fell to 1 percent.

By 1996, the total percentage of women and minority-owned businesses receiving State highway contracts was still about 1 percent. At the same time, for Federal highway contracts in Michigan, operating under the Federal program, women and minority-owned businesses received 12.7 percent of the contract dollars.

In other words, on Federal highway construction projects, operating with a DBE program, women and minority-owned businesses received a 12 times greater share of contracting dollars than they did on State projects operating without such a program. Mr. President, that is because the program was repealed in Michigan.

There have been similar results in other States and cities, and this obviously tells us something. It is obviously a warning. That is, if we repeal the Federal program or cut the Federal program way back—which, in effect, the McConnell amendment does—opportunities for women and minority-owned businesses are likely to suffer a sharp decline.

Think about what that will mean for hundreds of new, startup companies all across our country.

In many cases, women and minority group members have worked for years to build up their companies. They have borrowed thousands of dollars for expensive construction equipment, all based on the expectation that in America they will have a fair shot, a fair shot at highway construction contracts.

If now, in this bill, we eliminate the DBE Program, a lot of small businesses will be left high and dry.

Pulling all this together, the Disadvantaged Business Enterprise Program is constitutional, it's fair, it works, and it is good for America. We should maintain the program, not weaken or repeal it.

That brings me to the McConnell amendment. The amendment repeals the Disadvantaged Business Enterprise Program and replaces it with something called the ''Emerging Business Enterprise Program.'' This program requires each State to establish a program for outreach, education, and technical assistance for small businesses. But that is about it.

I am all for outreach and I am all for education and technical assistance. Who isn't? But by eliminating contract goals—not quotas, but goals—the McConnell amendment dilutes the program down to almost nothing. And by doing so, it really misses the point.

Women and minority group members who own small construction companies often do need outreach, they often do need education and technical assistance, but in many cases that is not enough. Even when they have the information and the technical skills, they often find that they just can't crack into the market. That is why we need to do more, why we need to establish goals, goals that should be flexible and should be based on the specific circumstances of each State—and they are. But without goals against which we can measure progress, our commitment to expanded opportunity is nothing more than an empty promise.

Fifteen years ago, we made a commitment. We told women and minority-owned businesses in this country that we would give them an opportunity to compete, we would give them a seat at the table.

The program has worked. It has created more opportunity, not less, and it's still necessary.

As President Clinton has said, ''In the fight for the future, we need all hands on deck, and some of those hands still need a helping hand.''

Mr. President, I urge that we maintain our commitment to opportunity, to inclusiveness, and to lending a helping hand. I urge that the MCCONNELL amendment be defeated.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). Who yields time?

Mr. WARNER. On behalf of the Senator from Kentucky, I yield such time as the Senator from Missouri wishes.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that, in accordance with an agreement reached between the Members on the floor, that Senator KERRY of Massachusetts be allowed to speak following my remarks.

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

Mr. ASHCROFT. Mr. President, I am pleased to take part in the debate to reauthorize the Intermodal Surface Transportation Efficiency Act of 1997, commonly known as ISTEA. This debate was originally scheduled to take place the first week in May. As we all know, the current measure is designed to end in the last week in April and, had we not debated this until the first week of May, there would have been an interruption in the funding and the opportunity to build highways in this country. So I express my appreciation to the majority leader for moving this debate up and making it possible for us to address this issue in a timely manner. When we are talking about the construction of infrastructure, which allows the body politic to be nourished by the stream of commerce, I think it is important that we don't interrupt that stream. I thank the majority leader.

Although I rise to speak specifically on the amendment of the Senator from Kentucky, I briefly would like to talk about the underlying bill. I must say, I am grateful, on behalf of the citizens of Missouri, for the work that has been done on this bill to ensure a fair return to Missourians for the kind of contribution that they make to the highway trust fund. I especially thank the senior Senator from the State of Missouri, KIT BOND, for his tireless effort in this battle. No Senator in this Chamber, in my judgment, has made a more conscientious and consistent effort to make sure that there was fairness in the allocation of these highway resources than Senator KIT BOND.

To me, the issue is clear, and it has been clear throughout the entire debate. When a Missourian fills the gas tank and pays 4.3 cents in Federal fuel taxes, that money should go to improving the roads of the State rather than paying for additional Federal spending on some social program in a distant State, and that is another improvement that this bill reflects, putting highway taxes back into the highway trust fund.

Mr. WARNER. Mr. President, will the Senator yield? I compliment the Senator for recognizing the contributions of Senator BOND. As my colleague knows, a good deal of money has been added to this bill. Senator BOND laid the foundation, together with the Senator's support, whereby this became a reality in the sequencing in the Byrd-Gramm-Baucus-WARNER amendment. But that foundation was laid by the distinguished senior Senator. He serves on the committee and helped develop the underlying bill and the amendment.

I thank the Senator for his participation. Missouri sent two strong proponents for this highway bill, and I compliment the Senator.

Mr. ASHCROFT. I thank the Senator from Virginia. His recognition of the contribution of Senator BOND of Missouri is appreciated and appropriate. I think the decision, which involved both the authorizing committee and the Budget Committee, to dedicate the 4.3-cent fuel tax to highways is a good one, and I am pleased to support that aspect of this bill. I believe that when this is all over, Missourians will now see a 91

cent return on each dollar as opposed to a dismal 80 cents that it received under the former funding scheme. Under the formula that was passed out of the Environment and Public Works Committee, Missouri will receive $3.6 billion compared to $2.4 billion that Missouri received over the last 6 years of the 1991 highway bill. Missouri's average allocation per year would be around $600 million as opposed to around $400 million that the State received under the old bill. I believe this allocation of highway trust money to the development and construction of highways is appropriate.

I would add that this is not taking from other Government programs. This is the allocation of highway trust money for highways. Uniquely, we are beginning to get to the place where we focus resources that we take from people who use the highways on the highways. That is a major benefit. I would like to see a 100 percent return on Missouri's investments. I appreciate the advancements made over the last few days, and I am committed to working with the Budget Committee to see that these additional funds are offset so that we can stay within the budget caps that were approved by this Congress last session.

I quickly would like to address one more issue. This is the amendment that was voted on yesterday to take away State highway funds if they do not establish a blood alcohol content of .08 for drunk-driving violations. I opposed this amendment, not because I do not abhor drunk driving. Far too many of us have lost loved ones as a result of this tragedy. However, I believe States are in the best position to make the decision on the best way to eliminate drunk driving. The ''stick'' approach offered in the amendment was rejected by the 104th Congress, when we repealed the Federal speed limit. I believe the ''carrot'' approach, contained in the safety provisions of this bill, which contain a .08 option, is the appropriate method to allow States the freedom to establish comprehensive programs to discourage drunk driving. That is why the National Governors Association, the National Association of Governors' Highway Safety Representatives, the National Conference of State Legislatures, the National Association of Counties, and the American Association of State Highway and Transportation Officials support the safety provisions contained in the bill. I look forward to the continued debate on the underlying policies in this bill.

Now I would like to address the policy and constitutional principles raised by Senator MCCONNELL's amendment, which I have cosponsored. The specific issue raised by Senator MCCONNELL's amendment is whether we should reauthorize provisions in the ISTEA bill which treat two identically situated individuals differently, based solely on their race. Let me just say, again, the question or issue raised by Senator MCCONNELL's amendment is whether we should reauthorize provisions of the bill which require that we treat two identically situated individuals differently only because of their race.

Specifically, a provision in the ISTEA measure requires that 10 percent of the amounts made available under certain titles of the act shall be set aside for small business concerns owned and controlled by socially and economically disadvantaged individuals. The provision goes on to define ''socially and economically disadvantaged individuals'' by cross-reference to section 8(d) of the Small Business Act.

If you go to that section, you will find that a Government contractor shall presume that ''socially and economically disadvantaged individuals'' include black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities. The net effect of these provisions is that if two bids come in from two subcontractors, one owned by a white male and the other by a racial minority, and the bids are the same, or even close, the job will go to the minority-owned company, not the low bidder.

I find this objectionable as a matter of public policy. But the question facing the Senate is more than a debate over policy. The U.S. Supreme Court has made it clear that a constitutional principle is at stake. Members of this body have differed on the question of whether the Government should treat people differently solely because of their race. Personally, I believe that we all desperately want a future of racial reconciliation in which race is simply no longer relevant. People of good faith can differ on how best to achieve racial harmony. My own view is that the best way is to usher in a future of racial reconciliation by ending race-conscious Government programs, starting today. You don't end racial discrimination by promoting racial discrimination.

But, while the race-based set-asides in ISTEA are part of this broader debate about whether the Government should let racial factors cloud its decisions—a debate that raises difficult questions—the ISTEA race-based set-asides are an easy case. In the first place, the particular race-based set-asides in the transportation bill represent an issue of constitutional principle.

We cannot evaluate these set-asides as if we were legislating on a blank slate. The Supreme Court, and now a Federal district court on remand, have considered these set-asides and declared them constitutionally suspect. These courts did not consider a similar program, or a related program, but the exact program that is at issue today.

In the 1995 Adarand decision, the Supreme Court held that race-based Government programs are subject to the most exacting level of scrutiny. The Court rejected the notion that the Government's use of race should be subject to a more relaxed standard because the Government's stated purpose was assisting rather than disadvantaging racial minorities. Instead, the Court made clear that when the Government makes distinctions on the basis of race, it is engaging in a dangerous business, and such laws will survive only if they are narrowly tailored to serve a compelling Government interest.

The Supreme Court stopped just short of declaring the program unconstitutional, leaving that task for the district court after any additional development of the record that was necessary. In June of last year, the district court to which the Supreme Court referred the measure confirmed what seemed obvious; namely, that the Federal Government's race-based set-asides were unconstitutional under the Supreme Court's demanding test of strict scrutiny. As Judge Kane emphasized, the race-based presumption of economic disadvantage is both over- and underinclusive. Indeed, the district court said it is not narrow at all; it is both too broad on the one side and too narrow on the other side. It falls because it is not narrowly tailored. Judge Kane observed that the Sultan of Brunei—I assume because this is an Asian Pacific person, a minority—in spite of being one of the wealthiest persons in the world, would qualify because of race-based consciousness that is specified in the act and would presumptively qualify as a disadvantaged business entity. The district court understands that if you are trying to correct social and business disadvantage, economic disadvantage, and instead of using something that is narrowly tailored to address social and economic disadvantage you use something as broad as race, you are using a category which is overly broad and can't be considered to be strictly tailored—can't be said to be narrowly tailored.

We know there are individuals in the Asian Pacific ethnic group or minority who are as wealthy as any individuals in our entire culture and some as poor as any individuals in our entire culture. The fact is that the racial identity of an individual does not carry an individual into the specific narrow category of being socially or economically disadvantaged.

My concerns with the effect of the court decisions on Congress' ability to reauthorize these provisions, led me to convene a hearing in the Constitution Subcommittee of the Judiciary Committee of the Senate, which I have the privilege of chairing, to examine the constitutionality of the provision. At that hearing we were privileged to receive testimony from Valery Pech, who, along with her husband, Randy, runs Adarand Constructors, the plaintiff in the Adarand cases. She provided the subcommittee with a firsthand look at how this program has operated in practice and the impact it has had on their business.

She testified how this program has caused their firm to lose several contracts, despite being the low bidder on

the job. She has also testified that the beneficiaries of this program, which is purportedly targeted at disadvantaged business entities, are, in fact, well-established firms. It has already been noted on the floor of this Senate that most of the time those firms, when they win a contract, win it based on the fact that they are the low bidders, but when they are involved in this kind of contract for federally related tasks, they do not even have to be the low bidder.

I think it should be said that the general public of the country does not want to spend its money if it is not really helping someone who is needy, but just helping someone who is a part of a broad category to get a job which they don't earn by being the best in the competition. The American way is not to award the prize to the one who has this race or that race, or has this disadvantage or that disadvantage by the law. The American system has been to reward achievement and merit. This is a fundamental value of our culture. It is also reflected in our Constitution, and it was reinforced in the Adarand case, both at the Supreme Court level and on the remand. This is not the only set of cases that has decided this.

As a matter of fact, it has been represented on the floor that there has been no other case in which this has been decided. But I think, if not directly on point at least so similar that one could not ignore it, is the case of Houston Contractors Association v. The Metropolitan Transit Authority of Harris County. In that instance, it was another U.S. Federal district court which ruled, consistent with the U.S. Supreme Court, that such set-asides and quotas and preferences as are contained in the ISTEA bill are simply wrong. Those courts, I believe, would provide more than an adequate basis; they would provide a compelling argument that we adopt the amendment as propounded and proposed by the Senator from Kentucky.

The two Adarand decisions make plain the unconstitutionality of the ISTEA set-asides. But removing this provision from the bill as unconstitutional should be an easy decision for Congress for a second reason—the program uses race for a plainly impermissible end. The Constitution obligates the Congress to reject unconstitutional legislation whether or not the courts have, as here, already held the legislation unconstitutional. Wholly apart from the conclusions of the two Adarand courts, it is obvious that the ISTEA set-asides use racial classifications in an impermissible way.

Reasonable persons can differ as to whether the Constitution forbids the Government from using race as a factor in rectifying past racial discrimination. You might have a different situation if you were saying the statute set up a presumption that there had been racial discrimination and then used race as the basis for rectifying that racial discrimination. That is not what the Disadvantaged Business Enterprise Program does.

As its name suggests, the Disadvantaged Business Enterprise Program seeks to assure that a certain percentage of Government contracting dollars flow to—and here are the words—''socially and economically disadvantaged individuals.''

The statute then defines a disadvantaged business enterprise as any business owned by members of certain ethnic groups and, since 1987, businesses owned by women of any race.

In the statute, you say that you are trying to correct the problem, which is social and economic, and then you get to the remedy, and the remedy that is proposed is not based on social concerns, it is not based on economics; it is based on race.

The truth of the matter is that the Supreme Court says you have to narrowly tailor the remedy and focus the remedy on the problem, but here the statute says that there is a problem that is social and economic but then has a solution which is racial. Obviously, the district court even saw the humor of the lack of fit between problem and remedy. So far does the racial remedy miss the social and economic problem that it would allow the Sultan of Brunei, one of the richest people in the world, to be presumed socially and economically disadvantaged.

It is clear, you do not have to have a Supreme Court ruling, you do not have to have the district court rulings, you do not have to have a second district court ruling in the State of Texas to tell you this. I don't think you have to be a rocket scientist or law school professor. If the problem is social and economic and your solutions should be narrowly tailored, the solution should be social and economic. It should be focused on the problem. But instead of this statute focusing the solution on the problem of social and economic disadvantage, it focuses the solution on race, which wasn't something that was mentioned as the problem to begin with.

The notion that every small business owned by racial minorities is somehow economically disadvantaged is nonsense. It flies in the face of reality. As a matter of fact, it is an affront to many of the businesses owned by racial minorities or women in this country. Many are very successful. For us to presume that because a black person or a Hispanic person or an Asian person owns a business it is disadvantaged or it is economically failing is for us to engage in rank prejudice, in my mind.

I cannot imagine going up to someone and saying, ''I see that your computer business is disadvantaged, it's economically failing, it needs Government assistance, you are a charity case.''

''Why?''

''Because your race is a minority race.''

That is un-American to me. It would be an affront to me if I were told that in spite of my balance sheet, in spite of my portfolio, in spite of the fact that we had orders backlogged, we couldn't supply the demand, in spite of the fact our profits were up, we were still economically and socially disadvantaged just because of the way we were born, the color of our skin. That is an affront to the dignity of the individuals that this law apparently hopes to protect.

I simply could not in good conscience go to my fellow Americans and say, ''Well, your bottom line may show that you are successful and your stock may be worth millions and you may be getting lots of contracts and you may be beating everybody else in your business, but you're a failure because of your race,'' or ''you are disadvantaged because of your race.'' That is something that we should not do as a country. Government should not go to people and say, ''We're going to presume you're a failure, we are going to presume you economically can't make it, that you are socially disadvantaged because you are of a certain race or a certain ethnic minority.''

I can't believe that. Why should we suggest that? We have seen time and time again, and we see it more and more frequently, people without regard to race, because of this economy. The economy of America doesn't make decisions based on race—look how many of the role models that are used in selling products all across this country are people of a wide variety of racial and ethnic backgrounds. Some of the most valuable endorsements in America are endorsements from people who, according to this law, would be socially and economically disadvantaged because of race. I would hate to tell some of those people they were disadvantaged. They might take out their wallet and buy me on the spot. They might buy everything that I own, and they could probably do it out of petty cash.

I think the day has passed when we as a nation should try to tell people because they are of a particular race that they have an economic or social disadvantage, when it is pretty clear, when the facts of the matter just might be incontrovertible that they are not disadvantaged.

At the hearing we held in the Constitution Subcommittee, a number of witnesses testified concerning the unconstitutionality of these set-asides and the futility of the Clinton administration's efforts to implement this flawed program and to continue to tell people that based on race alone they are somehow economically disadvantaged or unsuccessful. For example, Professor George LaNoue, of the University of Maryland, provided a detailed account of how the administration has failed to conduct the kind of detailed statistical analysis necessary to justify a race-based program. There is no evidence of how specific groups have been the subject of particular acts of discrimination and how the program is tailored to address these instances of discrimination. Thus, according to Professor LaNoue, there is no compelling

interest to justify the use of race as a proxy or as a way of defining remedy in this context.

Other constitutional scholars focused on the critical lack of narrow tailoring in this statute. As Professor Eugene Volokh of the UCLA law school stated:

The statute as now written . . . is not something that can be saved through any regulations. It seems to be fatally overinclusive, and that strikes me as an easy case that it is not narrowly tailored.

Easy case.

Professor Volokh's testimony reflects the fact that the Constitution allows the Federal Government to use race as a factor only in the rarest of circumstances and only with surgical precision. Well, surgical precision would probably have lopped off the Sultan of Brunei, I might say.

As the constitutional scholars on our panel concluded, the race-based set-asides in this bill are not drafted with sufficient precision or supported with enough statistical evidence to survive constitutional scrutiny.

I ask unanimous consent to have printed in the RECORD an excerpt of the written testimony of Professor LaNoue and the full written testimony of Professor Volokh.

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

THE COMPELLING INTEREST BASIS FOR THE USE OF RACE AND ETHNIC CONSCIOUS MEANS IN THE U.S. DOT PROPOSED REGULATIONS FOR MODIFYING ITS DBE PROGRAM: AN ANALYSIS

(Excerpts of testimony before the Subcommittee on the Constitution, Federalism and Property Rights of the Committee on the Judiciary U.S. Senate by George R. La Noue, Professor of Political Science, Policy Sciences Graduate Program, University of Maryland Baltimore County, and University of Maryland Graduate School Baltimore; Director, Project on Civil Rights and Public Contracts (Phone 410–455–2180); (Currently Visiting Scholar, Institute for Governmental Studies, University of California Berkeley) (Phone-510–527–6088), September 30, 1997)

Criticisms of the Administration's failure to produce information necessary to support a compelling interest or narrow tailoring with regard to the use of racial and ethnic preferences in federal procurement programs.

Despite the fact that more than two years have passed since the Supreme's Court's decision in *Adarand v. Pena,* and despite the fact that the Justice Department and other federal agencies have devoted a considerable amount of their formidable resources to responding to *Adarand,* the federal government still have not produced:

1. Any findings about whether there has been any discrimination by any federal agency in the contemporary procurement process.

2. Any findings about whether any state DOT agency or any other state agency has discriminated in the award of federal contract dollars.

3. Any findings about whether there has been any underutilization of qualified, willing and able MBE contractors in federal procurement or federally assisted procurement as prime contractors or subcontractors. The federal government has completed no disparity study that could create the ''proper findings'' the judiciary requires of governments before they employ race conscious measures.

4. Any findings about whether, when MBEs bid on contracts, they are proportionately successful. No study or who bids on federal contracts has been released.

5. Any statistical analysis of whether the particular racial and ethnic groups granted presumptive eligibility are in fact disadvantaged because of patterns of deliberate exclusion or discrimination in recent years.

6. Any evaluation of the effectiveness of existing federal race neutral programs or the possibility of creating new ones.

7. On May 23, 1996, the Justice Department proposed ''benchmark limits'' for each industry which were intended to represent the ''level of minority contracting that one would reasonably expect to find in a market absent discrimination or its effects.'' and to control the decision of whether race conscious means were necessary in federal procurement related to that industry. (61 Fed. Reg. 26042, 26045, 1996). These benchmark limits still have not been produced. (''Response to Comments to Justice Departments Proposed Reforms to Affirmative action in Federal Procurement,'' 62 Fed. Reg. 25650. 1997) The Department apparently thought such benchmark limits were essential to narrow tailoring and stated: ''Application of the benchmark limits ensures that any reliance on race is closely tied to the best available analysis of the relative capacity of minority firms to perform the work in question—or what their capacity would be in the absence of discrimination.'' (61 Fed. Reg. 26042, 26049, 1996).

Given this premise, the failure to develop the benchmark limits suggests federal goals are not narrowly tailored.

TESTIMONY BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION, FEDERALISM AND PROPERTY RIGHTS OF THE U.S. SENATE COMMITTEE ON THE JUDICIARY

(By Eugene Volokh, Acting Professor of Law, UCLA Law School)

1. THE ISTEA IS UNCONSTITUTIONAL

There are hard cases and easy cases under the Supreme Court's race discrimination jurisprudence. This is a pretty easy case.

To be constitutional, a racially discriminatory program must be narrowly tailored to a compelling state interest. The ISTEA is not narrowly tailored in at least four ways:

A. Overinclusiveness. I know of no evidence that, say, South Asians or Cuban-Americans, or Spanish-Americans, or East Asians are currently suffering from massive race discrimination or the legacy of past discrimination. Doubtless there's some discrimination against these groups, just as there's some against Jews (my own ethnic group), Italians, Irish, and others. But there's no evidence that there's anywhere near enough discrimination to justify preferences for these favored groups, or to explain why Afghans, who are not seen as South Asians, should be treated differently from Pakistanis, who are.[1]

This alone makes the ISTEA unconstitutional under the Court's decision in *City of Richmond v. J.A. Croson Co.,*[2] and unconstitutional in a way that no regulations can fix, because the statute itself contains the impermissible classifications and the regulations must remain consistent with the statute.

B. Mismatch between the alleged discrimination and the remedy. ''Narrow tailoring'' means that the racial classification must closely fit the government's interest in remedying discrimination; but the remedy here simply doesn't correspond to the alleged discriminatory conduct.

Consider, for instance, the supposed lending discrimination against minority-owned businesses. If indeed lenders are refusing to lend to qualified minority businesses, the narrowly tailored remedy is to prevent or compensate for this refusal: For instance, to set up a corporation that will lend to all qualified businesses that have been passed over by other lenders. In fact, if these businesses are really qualified, then there's money to be made doing this; the remedy can thus even be self-funding.

But the statute doesn't contain any narrowly-tailored remedy like this. Instead, it provides a set-aside to all minority-owned businesses, whether or not they have suffered from discrimination in lending, with absolutely no program that specifically addresses the supposedly grave problem of lending discrimination.

In fact, the statute's ''remedy'' here is actually perverse, helping those who seem to need help least. Those businesses that benefit from the set-aside are the ones that ultimately did get the loans they needed. Those that suffered most, that couldn't get the loans, are out of business and aren't helped by the set-aside at all.

C. The need for a race-neutral alternative. The lending example would also be a race-neutral remedy—it would help all businesses that were unfairly denied funding, regardless of their owners' race. The Court has clearly said that race-based remedies are allowed only when race-neutral alternatives are unavailable.[3] But the statute imposes a set-aside that's required regardless of the availability of race-neutral solutions.

D. The need for geographical tailoring. Different parts of the country have wildly different ethnic compositions. Hawaii, which is majority non-white, is a very different place from Maine, and you'd expect very different levels of minority participation in each state's contracting industry.

Likewise, different parts of the country have different levels of participation by women in contracting, and different levels of ethnic discrimination against different ethnic groups. Having a uniform set-aside throughout the country, regardless of all these factors, is the opposite of narrow tailoring.

This is a somewhat controversial point; for instance, the *Adarand* trial court has taken a different view.[4] Still it seems to make common sense. If contracting discrimination against minorities in one state is largely eradicated—or if the paucity of minority contractors in that state is caused by the small minority population in the state—then it's wrong to discriminate against whites there just because substantial discrimination against minorities continues elsewhere. Congress is quite right to try to create nationwide remedies, but ''narrow tailoring'' consists of creating nationwide remedies that are tailored to local conditions, not remedies that treat the entire country as one undifferentiated mass.

Perhaps someone can propose some statutory changes that will make ISTEA's race preference program constitutional. I doubt that this is possible, but one can't know until one sees the specific proposal. But in its current form ISTEA is clearly invalid.

2. CONGRESS'S CONSTITUTIONAL DUTIES

In *Adarand Constructors, Inc.* v. *Pena,*[5] the Court held that race classifications must pass strict scrutiny. This means that the Court will strictly scrutinize them, but it also means that Congress must strictly scrutinize them, too. Before Congress enacts any racially discriminatory program, Congress itself must verify that the program is indeed narrowly tailored to a compelling state interest.

[1] Footnotes at end of article.

This is especially so because the Court has suggested that it may in some measure defer to Congress's factual findings. Though the Court never abandons its own duty to independently review the facts, it acknowledges Congress's factfinding capabilities, and thus listens carefully to Congress's judgments.

This deference, then, would mean that the Court is trusting Congress to do the right thing: To look at the facts carefully and skeptically, and to make sure that race preferences aren't just politically convenient or seemingly useful, but genuinely and ineluctably necessary. Congress's solemn constitutional obligation would thus be made even graver by the fact that a coordinate branch is relying on Congress's faithful discharge of its duties.

3. A PRACTICAL NOTE

So far, I have made two rather technical legal points; I'd like to briefly step back and make a more practical one.

People on both sides of this debate share a common goal: To eliminate discrimination. That's why the government properly demands that contractors not discriminate. But under ISTEA, the government in the same breath tells the Adarand Constructors of the world: ''While we're demanding that you not discriminate—while we're telling you that race discrimination is a horrible evil—we're at the same time proudly discriminating against you because of your race. You must never treat an employee or a subcontractor worse than another because he's black or Hispanic or Asian. But we are treating you worse than others because you're white.''

Is that fair? And will it really work towards our shared goal of ending discrimination? It seems to me the answer to both these question is ''no.''

FOOTNOTES

[1] In theory, the presumption of social disadvantage is rebuttable—but mostly in theory. In practice, neither the federal government nor state grant recipients have a duty to investigate whether a supposedly ''disadvantaged'' minority is indeed disadvantaged. *Adarand Constructors v. Pena* 965 F. Supp. 1556, 1565 (D. Colo. 1997). In fact, state grant recipients are *required* to presume disadvantage until a third party comes forward with contrary evidence. 49 C.F.R. pt. 23, subpt. D, app. A.

Moreover, while members of favored racial groups get the benefit of the presumption, members of other groups who are also socially disadvantaged have to show this disadvantage by *clear and convincing evidence*—a far higher standard than the conventional ''preponderance of the evidence.'' 13 C.F.R. § 124.105(c).

The deck is thus stacked very much in the direction of treating the racial presumption as being essentially dispositive.

[2] 488 U.S. 469, 506 (1989).

[3] Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 237–38 (1995); *Croson*, 488 U.S. at 507.

[4] Adarand Constructors, Inc. v. Pena, 965 F. Supp. 1556, 1573 (D. Colo. 1997).

[5] 115 S. Ct. 2097 (1995).

Mr. ASHCROFT. Mr. President, the Constitution gives the Congress an important duty in upholding the Constitution. The oath we take to uphold the Constitution gives us an obligation to vote against unconstitutional laws. The hearing I held in the Constitution Subcommittee convinced me that this is clearly one of those unconstitutional provisions that should be removed from the statute.

I yield the floor.

Mr. MCCONNELL. Mr. President, can I say very briefly to the Senator from Missouri how much I appreciate his fine addition to this debate and how grateful I am for his leadership on this important issue, as well as the distinguished Senator from Alabama, the current occupant of the Chair. They both understand the issue well and make an important contribution to the debate.

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

Mr. KERRY. Mr. President, I yield myself, with the permission of the manager, such time as I may use.

I have listened carefully now to a number of the arguments for the amendment of the Senator from Kentucky, and I am confident that a good many of my colleagues will join me in adamantly opposing this amendment and, most important, the arguments and the approach that underlie it. This is a very, very significant debate for the Senate, and it is the first very significant confrontation, though it will probably—not probably, certainly—not be the last on the issue of race.

This is a fundamental challenge to an effort that this country has undertaken to make real the promises of our Founding Fathers and the fundamental values of our Nation: economic opportunity, equal opportunity, a chance to be able to share in the remarkable assets of our Nation.

I listened carefully to the Senator from Missouri, and one phrase in particular in his comments that he kept repeating was that the economy of America doesn't make decisions based on race; let me repeat, the economy of America doesn't make decisions based on race.

First of all, I respectfully submit to my friend from Missouri, the economy, per se, doesn't make the decisions; people make the decisions, people within the economy, CEOs of companies, boards of directors, shareholders, whole companies, individual employers, wholly owned subsidiaries. But it is individuals, it is the bosses who hire, it is the individuals who commit a company to a particular direction.

The fact is that individuals in America discriminate. Even in 1998 they discriminate, and anybody who believes that there is not sufficient level of discrimination with respect to women-owned businesses and minority-owned businesses, minorities themselves or women themselves within the marketplace is not looking at the statistics, is not looking at the cases, is not looking at the evidence which clearly documents the existence of that discrimination. I will say more about that in a minute, Mr. President.

There are three fundamental reasons why we should not accept the amendment of the Senator from Kentucky. Reason No. 1 is the program for disadvantaged business enterprises, the DBE Program, is constitutional. It will pass constitutional muster, contrary to the arguments that are being set forth.

Secondly, because of the discrimination that I have just broadly pointed to, it is necessary.

And thirdly, Mr. President, it works; it works brilliantly. There is no reason that we should take a program which already reaches out to a very small group of disadvantaged people and broaden the definitions so as to give more of the very little that goes to the disadvantaged to the vast majority who are already getting the vast majority of what the Federal Government expends in its programs.

I might add, there is, indeed, a compelling interest in the Federal Government making this kind of choice about how the Federal Government will expend Federal dollars.

Mr. President, let me point out, first of all, this is not a quota. It is a set-aside of a specific amount of money, but there is no specific direction as to who gets that amount of money. There is no quota of numbers of women, no quotas of numbers of particular races. It is open to any disadvantaged business enterprise.

And while we set aside a very specific sum of money, we do not allocate it with specificity. We set a national goal. And it is appropriate in this country to set national goals for what we will do to try to break down the walls of discrimination, the barriers against equal opportunity, in order to give people an opportunity to share in the full breadth of the upside of the economy of our Nation.

Mr. President, this goal is renegotiated annually. And it has worked very well to encourage disadvantaged business participation in these contracts. I add, most States have exceeded the 10 percent goal, but there is flexibility where it is needed. And existing law authorizes the Secretary of Transportation to lower that goal in order to respond to local conditions.

So when my colleague says that there has to be a level of flexibility, and it has to be narrowly defined, I respectfully suggest that part of that narrowness is met by the fact that the Secretary of Transportation has the ability to lower that goal under very clear circumstances.

I point out to my colleagues that since this program began, first as an administrative initiative in the late 1970s, and later by statute in 1982, it has been an extraordinarily successful tool for leveling the playing field in Government contracting and for remedying racial and sex discrimination, which still persist.

I add to my colleagues, where you have a showing of clear cases or a history or a pattern or instances of this kind of discrimination, we have an affirmative obligation, both a statutory one and a moral one, to make certain that we are going to do something very specific to respond to that kind of discrimination. And, as I will show, the evidence is so overwhelming as to what happens when you do not have it, that it is clear why there is a compelling interest for the Government to put this kind of effort into place.

Many of the firms that have been able to use the program, the women-

owned firms or minority-owned businesses, literally would have been excluded from doing so altogether were it not for the DBE program. And it is not, as my colleague from Missouri said—he kept saying that since we set up this kind of goal, some people of race believe that they are at a disadvantage because of their race. Ask people who participate in the program. There are countless people who will tell you they never believed they were disadvantaged. They do not think they are disadvantaged today. And, in fact, it is only because of the existence of the program that they have been able to prove to people that not only do they not believe they are disadvantaged, but they are not because they can perform equally as well as any majority firm. And that, in fact, has been a record which has prompted many States to come back and be extraordinarily supportive of the program.

In 1996, I am pleased to say, Massachusetts exceeded its goal of providing 11 percent of the Federally assisted highway dollars to DBEs by providing about 13.6 percent in total to DBEs. And I add, in one multi-year project alone, Massachusetts provided 147 women-owned businesses and 227 minority-owned businesses with an aggregate amount of some $500 million of contracts. And the program has been an enormous success and very well received, Mr. President.

So, let me look at the constitutional issue for a moment, if I may.

Contrary to the arguments of the Senator from Missouri, and others, I believe that a careful examination of the Adarand case will show that the Court made it very clear that ''strict scrutiny,'' as he said, is the appropriate constitutional review standard. But that means that you then look to the ''compelling State interest'' and to the ''narrowly tailored'' definition in order to see whether or not it will pass muster.

Unfortunately, Mr. President, as I mentioned earlier, there are just countless examples across the country of what happens when you do not have this kind of effort. Although minorities make up over 20 percent of the population, minority-owned firms constitute only 9 percent of all U.S. construction firms, and a mere 5 percent of Federal construction receipts.

So you can see the sort of downward curve between total levels of population, levels of construction, and then levels of receipts with respect to the outlays by the United States to those firms.

Women own approximately 9.2 percent of the Nation's construction firms, but according to the Urban Institute's recent study, their companies earn only half of what is earned by their male-owned counterparts.

Now, let us look at this question of ''narrowly tailored,'' Mr. President.

The DBE program is a very flexibly defined program. It allows for each State to respond to local conditions. And, by definition, by allowing each State to respond to the needs of that State, it becomes very narrowly tailored. In the implementation, the DBE program has authority to waive the DBE goal. It can waive it completely where it is not possible to achieve the goal in a particular contract or for a given year.

In addition, the Department of Transportation recently proposed regulations to modify the program even further so as to help with compliance with the Adarand test. So you cannot come to the floor of the Senate and measure the program exclusively by what might have been in place several years ago, since already proposed are a set of requirements that respond very specifically to the requirements of the Adarand test.

In fact, the Department of Transportation has received over 300 public comments in response to the proposed rules. And the States that commented on the rules overwhelmingly supported the Federal DBE program.

Let me call the Senate's attention to the specific regulatory changes which deal with this question of ''narrowly tailored'' and of ''flexibility,'' and which clearly bring it within constitutional muster.

First of all, the Department of Transportation is building even more flexibility into the program by setting goals that reflect the availability and the capacity of DBEs in a given market. And the contract recipients will be allowed greater flexibility to consider local circumstances in formulating their plans to achieve DBE participation.

Second, states and localities implementing the DBE program will be directed to use race neutral—let me emphasize this. The Senator from Missouri kept saying the decision will be made on the basis of race. In fact, there are specific race-neutral aspects to the program, such as outreach, training, technical assistance, and simplifying bonding or surety costs in the bid preparation. And those are used in order to achieve as broad a DBE participation as possible before any race-based aspect of the program is used. So the race-based aspect is pushed way down to the bottom of the list of criteria—only if you cannot satisfy the goals by virtue of those original considerations.

Third, the new regulations will reinforce existing provisions to ensure that firms owned by wealthy individuals are not certified as DBEs and to clarify that non-minority individuals who have suffered discrimination can be certified as DBE owners and become eligible to receive the same program benefits as minority-owned DBEs.

Now, I do not see how anybody, examining those three regulatory changes as a consequence of the Adarand decision, could say that that is not a legitimate effort to meet the standards of ''narrowly tailored'' and of ''flexibility.''

Mr. President, let me turn to the question of ''compelling interest'' and of ''need.'' Because in addition to being constitutional on its face, it is my judgment that only at peril could you turn your back on the reality of what has happened in many parts of our country.

In some States, the State DBE goals were repealed. So let us look at what happened where they were repealed, Mr. President. Was it a neutral reaction? No. Was it a marginal reaction? No. In point of fact, it was a draconian step backwards. Without a State goal for DBEs, the contracts to women-owned and minority-owned construction businesses in a number of different States plummeted.

We see prime contractors that use DBEs on Federally-assisted construction projects which had DBE goals often excluded DBE goals on State projects where there were no State goals. So in other words, you could have a company come in and they would be adhering to the Federal standards, but where there was no State goal they made absolutely no effort whatsoever in order to try to reach out to a disadvantaged businesses in their State-sponsored contracts.

In Michigan, just to take one example, within 9 months of ending the State DBE program, minority-owned businesses were completely shut out of the State highway construction projects. They received no contracts at all. By 1996, there was a tiny rebound to 1.1 percent, representing only 31 subcontracts. This compared to Michigan's Federal DBE participation of 554 subcontracts worth 12.7 percent. That is the difference, Mr. President—12.7 percent versus first none—zero; then creeping up to 1.1 percent.

Louisiana experienced a similar disparity between Federal DBE participation, where the 1996 DBE negotiated goal was 10 percent, and State participation where there was no State DBE program. In Federally assisted projects, disadvantaged women-owned and minority-owned contractors received 160 prime and subcontracts worth 12.4 percent of Louisiana's Federal contract dollars, compared to a State participation in a mere two prime contracts and 12 subcontracts. That was worth only .4 percent of the State highway construction dollars.

In Hillsborough County, FL, awards to minority-owned contractors fell by 99 percent—99 percent—after the minority contracting program was ended.

In San Jose, CA, suspension of the city's minority contracting program in 1989 resulted in a decrease of more than 80 percent in minority business participation in the city's prime contracts.

Now, I ask my colleagues, is that just the economy of our country speaking, an economy at one moment that is capable of having 12 percent and at another moment, where they lose the incentive to do it, to drop down to zero, to drop down by 99 percent, to drop down by 80 percent, to have .4 percent at the State level while at the Federal level there are 12 percent? You could

not have a more compelling interest if you tried, for understanding why it is that in this country we need to continue to break down those barriers of resistance. And there is nothing compelling in the proposal to take away from that marginal percentage and give it to those majority contracts and contractors who already are getting the lion's share of what we expend for transit and highway construction at the Federal level in this Nation.

Mr. President, as the Ranking Member of the Small Business Committee, I find two aspects of this MCCONNELL amendment particularly troubling.

First, the amendment expands the definition of who is eligible for help to include the vast majority of construction firms. Now, I am in favor of helping small businesses. We have done a lot in the Small Business Committee to make sure that they are helped. As a group, they ought to receive a greater percentage of Federal contract opportunities. And I want them to. All of the growth in our economy comes from small businesses. In fact, I cosponsored a bill with Chairman BOND last year that raised the small business Federal contracting goal from 20 percent to 23 percent.

But this program is intended to help level the playing field for businesses owned by individuals that have historically suffered racial, ethnic or sex discrimination in Federal construction contracting and that continue to suffer that kind of discrimination. It helps women-owned businesses, minority-owned businesses, and majority-owned businesses that have suffered discrimination. They receive about 15 percent of the Department of Transportation-assisted contract dollars.

Mr. President, the other 85 percent still goes to nondisadvantaged majority-owned companies. To increase the assistance to that universe of businesses that, according to the Federal Procurement Data Center, now receive 62 percent of contracts above $25,000, and a higher percentage of those below, would dilute the very salutary effects of the program on companies owned by truly disadvantaged individuals.

Second, and finally, the amendment proposes that the Senate substitute requirements for outreach compilations and directories of assistance and surveys of existing emerging businesses for the national DBE goal and the current DBE program. The proposed substitute program will be expensive to implement because of the detailed requirements for compilation and directories and the frequency with which updates have to be performed.

In addition to being expensive to implement, much of what is proposed as the substitute for the DBE program is simply duplicative of aspects of the existing DBE program and many of the Small Business Administration's programs that are already in place. Each year, the SBA provides outreach, training, technical, bonding, and surety assistance to thousands of Federal contractors through a wide variety of programs. Those programs include the SBA's procurement center representatives, its more than 950 Small Business Development Centers, its Women's Business Centers, and assistance provided through the procurement and minority small business staff in SBA's network of 69 offices throughout the country. It is hardly necessary to duplicate that or to come at it with some kind of add-on program.

Mr. President, time has shown that the DBE program works. It is a program that meets constitutional muster. It is a program that has a rational, national compelling interest. I hope that my colleagues will not undo what has proven to be of enormous benefit to countless minority- and women-owned businesses in the country. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I said to my colleague from Utah I will take less than 5 minutes.

The PRESIDING OFFICER. Who yields?

Mr. BAUCUS. Mr. President, I yield 5 minutes to the distinguished Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I will keep it very simple. As a Senator from Minnesota, I rise in strong support of this Disadvantaged Business Enterprise Program, what we are calling the DBE program. For people who are watching, if you didn't catch it, it is Disadvantaged Business Enterprise Program.

This program sets out a goal of 10 percent of the highway construction funds. The attempt is to make sure that 10 percent of these funds go to disadvantaged businesses, and the focus is on ''minority businesses'' and businesses owned by women.

My State of Minnesota has essentially had the equivalent of this program since 1980. One of the reasons I am really proud of being a Senator from Minnesota is I think we have a really strong, progressive, justice tradition. In the last 5 years, Minnesota Department of Transportation has exceeded the 10 percent goal. We have been between about 11 and 13 percent for contracts that have gone out to ''minority''-owned businesses and to women-owned businesses.

Mr. President, the important point to make for colleagues is that these businesses have been able to win these contracts because of a level playing field. It has enabled them to get their foot in the door. They haven't been able to obtain these contracts because they have a bid that comes in higher than other contractors. Other things have to be equal. They don't get these contracts because they do shoddy work. It is because these are effective businesses that do good work. What you have is a situation where around the country we have made the argument through this Disadvantage Business Enterprise Program, we are serious about entrepreneurship.

We think it is indeed better that the people who make the capital investment decisions in the communities we live in are people who own businesses and live in those communities, not people who make decisions over martinis halfway across the world. We are not talking about big multinational corporations.

Insofar as we are focused on our local economies and insofar as we are talking about entrepreneurship, I will tell you, as a member of the Small Business Committee, I have loved working on these issues. I am not ashamed to say that small businesses have been my teachers. I was a teacher, a college teacher. I never owned a small business, and I have learned a lot about what it takes to do so. But it is absolutely true that most of the growth in our economy is in the small business sector.

It is absolutely true that if we want to expand opportunities and if we don't want to turn our gaze away from an unpleasant reality, which is that we still have discrimination in our country—does anybody believe that America is blind to issues of race? Does anybody believe that we have conquered all of this? Does anybody believe that we don't want to try and redress some major historical grievances? That is what we are doing through this program.

It does just what the title says—it is the disadvantaged business enterprise program. It sets a goal of 10 percent of highway money going to these contractors which are owned by minorities and women. It has been enormously successful in the State of Minnesota. We exceed that goal. It enables people to get their foot in the door, start their businesses, and then they become successful in a whole lot of other areas as well.

I think then you have this kind of marriage between, on the one hand, trying to expand opportunity, on the other hand trying to correct a historical injustice, and—although there are only two hands—on the third hand, also being serious about promoting entrepreneurship, also being serious about making sure that women and people of color in our communities are able to obtain some of the funding that comes out of these contracts.

Instead, it will be a close vote. I hope we win. I think we should win. I do not believe that the U.S. Senate ought to be turning the clock back 30 years. I think we should be moving forward. I think a vote which would eliminate this program, the DBE program, would be an enormous step not forward for expanding opportunities, not forward for promoting entrepreneurship, not forward for women and minorities having these opportunities, it would be a giant leap backward.

That is why I come to the floor to speak in behalf of this program.

Mr. MCCONNELL. Mr. President, I yield the distinguished Senator from Utah such time as he may need.

Mr. HATCH. I thank my colleague.

Over thirty years ago, the U.S. Senate passed the Civil Rights Act of 1964. It was historic legislation, and its supporters showed great moral courage in seeing it through.

The principle underlying that Act was equal treatment: The federal government should treat all persons equally, regardless of their race, color, national origin or sex. Indeed, it should mandate equal treatment from employers, labor unions, providers of public accommodation as well as many others.

Now, Contrary to popular mythology, however, the Senate was not ahead of the moral curve when it passed the 1964 Act. Polls taken at the time show that a majority of Americans supported the legislation. Indeed, they continue to support it. They know that its principle is fundamental. The United States government has no business making distinctions based on skin color or sex. Period.

But there were many vocal opponents too. It is important to give credit to the members of the Senate who resisted those opponents by passing the legislation.

Somewhere over the course of the last generation, the federal government started to fall away from the 1964 Act's fundamental principle. In the name of ''affirmative action,'' is substituted a policy of preference based on race and sex for the policy of equal treatment. And that is why the term ''affirmative action'' sometimes has a bad connotation. The fact is, affirmative action calls for outreach, job training, education—those type of things I think everybody is for, and certainly I am for.

I have no doubt that the supporters of preferences were—and still are—well meaning. They wanted to do something about this country's very real history of racial and gender inequity. But the policy they created stood the color- and gender-blind principle of the 1964 Civil Rights Act on its head.

I believe that it was a serious error to compromise one of our most fundamental principles. Despite assurances from preference supporters that these programs will be only temporary—lasting for a few years at most—preference programs now permeate the Federal Government. Rather than withering away, they are showing a remarkable tendency to expand. New programs are added. New groups demand to be included. Under one program, preferences are now available to no less than forty ethnic groups.

Each time such an expansion occurs, we become less like the color- and gender-blind country that we aspire to be and more like those countries where an ethnic spoils system has been a way of life for centuries.

Who would have thought it would be so difficult for the Federal Government to reclaim the moral high ground? The public has never supported preferences. They have been demanding a return to equal treatment since preferences were first implemented. But the Federal Government's decision to compromise its principles has proven to be habit forming. Despite the public's support for a return to equal treatment, many of our Nation's leaders have refused to stand up for principle.

Even the most indefensible programs are tough to eliminate. ISTEA mandates that ''not less than 10 percent'' of Federal highways and transit funds be allocated to ''disadvantaged business enterprises,'' which firms owned by designated minority groups are presumed to be. It is a set-aside, pure and simple.

Now, I might add here that these so-called disadvantaged business enterprises need not be actually disadvantaged. Minority business owners who qualify for this program need not be poor or even middle class. The secret about this program is that, like many racial and gender preference programs, its beneficiaries are quite often wealthy. It is worse than no help for those—of all races and ethnicities—who could really use a helping hand. Such programs lull the good people of this Nation into believing that something's being done when in fact little or nothing is being done to help out those who really need the help.

If any set-aside program ought to be eliminated, this should be the one. It is the very same program confronted by the Supreme Court in the 1995 landmark case, Adarand Constructors v. Pena. At that time, the Court laid down a standard of strict scrutiny for this program and others like it. Under such a standard, the program is unconstitutional unless the federal government can demonstrate a compelling purpose and has offered a solution that is narrowly tailored to serve that purpose. It's a tough standard meet, but it's the standard our Constitution demands.

Last year, on remand, the District Court in Colorado applied the strict scrutiny standard and found this program to be wanting. The Court therefore held the program to be unconstitutional. That was after the Supreme Court had remanded it to the court to determine whether it deserved to see the light of day and the District court of Colorado in applying the scrutiny standard found this program to be unconstitutional.

That decision was no fluke. Since the Supreme Court's decision in Adarand, set aside programs have been consistently found to be unconstitutional by the federal courts. Yet, the bill being considered by the Senate blithely reauthorizes the program. In doing so, it ignores our responsibility to bring the program into compliance with the Constitution. That is a responsibility we cannot shirk.

The United States Senate is now seriously behind the moral curve on this issue. The public supports a return to principle. The courts are demanding it. The proposed amendment can do that. It eliminates set-asides based on race and sex and substitutes a non-discriminatory program of assistance for ''emerging business enterprises,'' something that most of us can agree on. It will help put us back on the right road. I urge you to support it.

Now, if you want the litany of the forty ethnic groups, here it is: African Americans, Hispanic Americans, Native Americans—including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans—including persons from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia, Vietnam, Korea, the Phillipines, the Republic of Palau, the Marshall Islands, Micronesia, the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, and Nauru, and Subcontinent Asian Americans—including persons from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldive Islands and Nepal. Just think about that. What we are doing is creating all kinds of special interest groups who are vying for these programs and, in the end, the wealthy are getting them anyway. But if we have the amendment of the distinguished Senator from Kentucky, we will be providing an opportunity for those truly emerging businesses that are disadvantaged.

To me, I see a tremendous difference between the language in the bill and the language proposed by the Senator from Kentucky, and I think the language proposed by the Senator from Kentucky is constitutional, where the language in the bill is unconstitutional.

I yield the floor.

Mr. MCCONNELL addressed the Chair.

Mr. CHAFEE. Does the Senator have a short request? I wanted to speak.

Mr. MCCONNELL. I thank the distinguished Senator from Utah. He has been a leader in this field of getting rid of unconstitutional quotas and preferences, and has been one of the principal cosponsors of the bill to eliminate all of the unconstitutional quotas and preferences in the Federal Government. I thank the Senator from Utah for his support and contribution to the debate.

Mr. CHAFEE. Mr. President, I have great affection for the Senator from Utah, but I don't greet his remarks with the enthusiasm that the Senator from Kentucky has.

The truth of the matter, Mr. President, is that this is the wrong amendment, at the wrong time, in the wrong place. Why do I say this? This is a transportation bill that every single one of us in this Chamber knows is a very important and difficult bill. Trying to balance everybody's interest has been very, very difficult. There isn't a Senator in this place who doesn't know exactly how much his or her State was getting under ISTEA I, then how much under the first proposal of ISTEA II,

and finally how much under these new proposals. And all of them want more. As I say, trying to satisfy all of these senators is very difficult.

To come forward with an amendment like this doesn't help. It flies right in the face of an October 1997 letter sent to the majority leader by the Secretary of Transportation. In that letter, which was sent when we first brought up this bill last fall—and there have been no changes in his position since then—Secretary Slater talks about the President's view on this whole Disadvantaged Business Enterprise, or DBE, Program. He closed his letter by saying this:

> This critical effort to achieve equal opportunity must continue. Removal of the DBE program from S. 1173 would be a serious blow to our efforts to assure fundamental fairness to the citizens of this country. I would find it difficult to recommend ISTEA reauthorization legislation to the President for his signature that did not include the DBE program.

This is a gentle way of saying, listen, folks, if you knock out the disadvantaged business enterprise section of S. 1173—which is exactly what the Senator from Kentucky is proposing to do—then there is going to be a veto of this legislation.

I see the Senator from Utah here. If I could get his attention for a moment. Now, he spoke against the DBE provision of our bill. But my question is, why pick on the provision in our bill? It is my understanding that similar affirmative action language is contained in some 160 different federal statutes or regulations. The Senator from Utah chairs the Judiciary Committee—and certainly he is masterful in that role, with all the great powers that supposedly appertain to the chairmanship of a committee—and thus out of that committee comes legislation he wants and bottled up in that committee is legislation he doesn't want. I notice that the Senator from Utah now has before him, in his own committee, legislation to eliminate all federal affirmative action programs, not just this program. So I am asking him—don't pick on our little program here that we are desperately trying to get through. Imagine, here is an amendment that puts the whole bill under the threat of a veto if it is adopted. If the Senator wants to debate affirmative action at the federal level, I would say to him, go ahead and deal with that issue in your own committee. Don't pick on our program. I can't name all 160 federal affirmative action programs, but certainly there are Small Business Administration programs and many others that have special provisions for disadvantaged parties.

So if the senator so wishes, go ahead and do a generic bill on eliminating affirmative action, and go ahead and have it out here on the floor. But I feel helpless here as you all come forward with a amendment like the one the senator from Kentucky has offered on our bill.

Mr. MCCONNELL. Is the Senator asking a question?

Mr. CHAFEE. I retract that word ''helpless.'' I feel frustrated. I am not totally helpless.

Mr. MCCONNELL. Mr. President, if the Senator was asking a question about why the Supreme Court and the district court ruled this provision unconstitutional, I say to my good friend that it cried out for correction.

Mr. CHAFEE. Let me answer that quickly. There may be many arguments against the DBE, but I must say that your weakest one is this so-called unconstitutional argument. We all know about the constitutionality issue. In 1995, the Supreme Court handed down a decision in Adarand v. Pena. In Adarand, the justices specifically said that federal affirmative action programs are not unconstitutional. As long as the programs meet a compelling governmental interest and are narrowly tailored, then they can pass constitutional muster. Now, US District Judge Kane, to whom the case was remanded, ended up holding that part of the DOT regulations were unconstitutional on the grounds they were not narrowly tailored. But that is going to be corrected under the new regulations that are due out this spring. So as I say, of all your arguments, that really is the weakest. As a matter of fact, I will give you an opportunity to jettison that argument, if you want.

Mr. MCCONNELL. I say to my good friend from Rhode Island, there has been no compelling interest found here, no such finding at all. I guess——

Mr. CHAFEE. Wait a minute. I don't want you to get on with that. Judge Kane found there was a compelling interest.

Mr. MCCONNELL. But not narrowly tailored. There have to be two standards: narrowly tailored and compelling interest. Narrowly tailored was not met and, consequently, this effort to jimmy around with the regulations is not going to cure the problem. What is going to happen, if the Senator is successful in defeating the amendment, is that some other plaintiff is going to have to bring some other case, at a cost of thousands in legal fees, to get this struck down one more time.

Mr. CHAFEE. Mr. President, I haven't heard from the Senator from Utah, the distinguished chairman of the committee who has power over all these affirmative action programs. Why doesn't he go after all of them? That would be a rather magnificent effort. It certainly would shake things up. The senator could come to the Senate and try to get rid of all 160 different affirmative action programs. Why doesn't he do that instead of picking on the highway program? Go after all of them. There is a suggestion for you. I certainly would not support that effort, but I am saying that if you really want to get into an affirmative action debate, why you don't do that, through your committee.

Mr. HATCH. If the Senator will yield, let me just say that we are going after all of these preferential programs. This is the first of the 160. We may have to do them one by one, because it is very difficult to even get an all-embracing bill up. But whether we go after them one by one or en bloc, it is important that we go after them. If we allow them to go on, we will be violating one of the basic principles of the Constitution—that is, treating people equally. We will be violating the actual, legitimate, straightforward language of the Constitution and the 1964 Civil Rights Act, which provide equal opportunity for all, not for a select few.

Now, with regard to this particular bill, I want to compliment my dear friend from Rhode Island and my friend from Montana, the two distinguished Senators, because they have carried what is a very difficult bill all the way to this position. I am not here to give them a rough time, but I do think that it's time that we do something about these unconstitutional set-asides and preferences. Whether we do it individually, each of the 160 programs, or whether we do it en bloc, it's time to try and set the record straight with regard to how these funds should be used.

Now, if the distinguished Senator from Kentucky were asking to prevent disadvantaged businesses from benefiting from these funds, I probably would part company with him. But he has a specific provision in here that would help emerging new business enterprises that otherwise might have difficulty competing to obtain some of this money. I heard one of our colleagues talk about various companies—I think it was the Senator from Minnesota—he talked about companies owned by minorities and women who literally deserve a right to compete because they are very competent and very good. Well, if they are very competent and good and they can compete, then they ought to compete for this work on the same terms and conditions as anybody else.

We should not be opening up a loophole here where companies that are very capable of competing have an absolute set-aside so they don't have to compete. I think that is what the Senator from Kentucky is doing. As far as I am concerned, I think we ought to go after these programs and straighten them out so they are not lacking in constitutionality—one at a time, or 10 at a time, or 160 at a time. Ultimately, I think we will probably vote on a full en bloc amendment. Until then, let's make these bills as constitutional as we can.

The PRESIDING OFFICER (Mr. HUTCHINSON). Who yields time?

Mr. BAUCUS. Mr. President, I yield myself such time as I may consume. I see the Senator from Maine on the floor, so I will be brief. I want to just make a couple of points here.

One, I will reiterate a point made by Senator CHAFEE. We, in the Senate, have received a letter from the Secretary of Transportation, Rodney Slater, who said he would find it difficult to recommend to the President

for signature ISTEA legislation that did not include the DBE Program, which has been noted in a statement that he would recommend the President veto this bill if the DBE Program is taken out.

I don't want to belabor this constitutionality argument, but it's clear that the Supreme Court did not rule that the Federal highway DBE Program in Colorado was unconstitutional. The Supreme Court did not rule it unconstitutional. It is clear. All Senators who have studied this know that. The Supreme Court said that program, like all affirmative action programs, must be subjected to a strict scrutiny test. That is what the Supreme Court held, that the Colorado public lands DBE Program had to be subject to the strict scrutiny test. That is all they held—nothing more, nothing less. The strict scrutiny test has two parts, compelling interest and narrow tailoring. Even the district court in Colorado said it looks like a compelling interest. So the only question is whether the program was narrowly tailored. A district court judge found, in his judgment, that it was not narrowly tailored. Well, that is one man's opinion. That is a district court judge's opinion. District court judges declare statutes unconstitutional all the time, only to find them overturned by the Supreme Court.

There is only one body that determines whether a statute is really constitutional or not, and that is the Supreme Court. The Supreme Court has not ruled up or down on the constitutionality of the program in Colorado. They have not ruled. In fact, the U.S. Government has filed an appeal on the district court decision. I have a letter from Associate Attorney General Raymond Fisher to Senator DASCHLE, which states that:

> As we discuss further below, we believe that the ISTEA program is narrowly tailored to meet this compelling interest and is constitutional under the Adarand standards.

The U.S. Government is going to appeal.

I ask unanimous consent that this letter printed in the RECORD.

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

> U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE ASSOCIATE ATTORNEY GENERAL,
> *Washington, DC, March 3, 1998.*
>
> Hon. THOMAS A. DASCHLE,
> *U.S. Senate,*
> *Washington, DC.*
>
> DEAR SENATOR DASCHLE: This letter responds to your request for the Department of Justice's views regarding the constitutionality of the Disadvantaged Business Enterprise (DBE) program of the Intermodal Surface Transportation Efficiency Act (ISTEA). I have been charged with supervising the Department's review of affirmative action programs at federal agencies, to ensure that such programs meet the constitutional standards enunciated by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200 (1995). The Congress has repeatedly found that racial discrimination and its effects continue, and that eradicating the effects of discrimination is a compelling interest. As we discuss further below, we believe that the ISTEA program is narrowly tailored to meet this compelling interest and is constitutional under the Adarand standards.
>
> Under the ISTEA DBE program, the Department of Transportation takes steps to ensure that firms qualifying as disadvantaged businesses are made aware of contracting and subcontracting opportunities in federally assisted state and local construction projects, and that prime contractors use DBEs to do some portion of federally assisted construction projects. As explained below, Congress has found that without the use of affirmative action measures such as the ISTEA DBE program, minority-owned firms would be severely disadvantaged in federally assisted construction projects. The program serves a compelling interest and is narrowly tailored to accomplish that interest.
>
> Congress originally established the federal highway DBE program in the Surface Transportation Assistance Act of 1982, based on a compelling record demonstrating that efforts were needed to ensure that federal highway dollars were not used to perpetuate the effects of racial discrimination on the ability of minority-owned small businesses to participate in government contracting opportunities. Indeed, the Supreme Court in 1980 addressed a very similar provision involving federally-assisted public works projects. See *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980). The Court analyzed a number of Congressional studies and reports issued prior to the provision at issue there, and found that ''Congress had abundant evidence from which it could conclude that minority businesses have been denied effective participation in public contracting opportunities by procurement practices that perpetuate the effects of prior discrimination.'' 448 U.S. at 477–478.
>
> Since that time, Congress has continued to oversee the DBE program and has frequently reevaluated the continuing need for it. See, e.g., The Disadvantaged Business Enterprise Program of the Federal-Aid Highway Act: Hearing Before the Subcomm. on Transp. of the Senate Comm. on Environment and Pub. Works, 99th Cong., 1st Sess. (1985) (testimony on need for program and capacity of minority-owned firms); Review of the 10–Percent Set Aside Program, Section 105(f) of the Surface Transportation Assistance Act of 1982: Hearings Before the House Comm. on Small Business, 98th Cong., 2d Sess. (1984) (testimony on problems faced by DBEs).
>
> On the basis of extensive evidence that the effects of discrimination continue to hamper the efforts of minority firms to compete equally in public construction contracting, Congress has twice reauthorized the program, first in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (which also added a provision including women-owned businesses in the program[1]), and again in 1991 in ISTEA. In 1987, Congress expressly found that ''barriers still remain'' to full participation by minorities and women in the highway and mass transit construction industry. S. Rep. No. 100–4 at 11. The House Committee on Small Business found ''discrimination and the present effects of past discrimination'' caused minority businesses to receive ''a disproportionately small share of Federal purchases.'' H.R. Rep. No. 100–460 at 18 (1987).
>
> The compelling interest that supported the DBE provisions of prior legislation still exists today. Congress has continued through the 1990s to hear testimony and review statistical evidence supporting the ongoing need for race- and gender-conscious measures to ensure that minority- and women-owned firms are not disproportionately excluded from federally assisted highway and transit projects. For example, in 1994 the House Committee on Government Operations found that minority-owned firms face particular difficulties in the construction industry due to negative perceptions by commercial lenders and domination of the industry by ''old buddy'' networks and family firms. H.R. Rep. No. 103–870 at 6–8, 15 & n.36 (1994). One particularly troubling area is discriminatory treatment in obtaining credit and bonding, which creates a negative cycle in which minority firms are unable to overcome their perceived high-risk status. See, e.g., Discrimination in Surety Bonding: Hearing Before and Subcomm. on Minority Enterprise, Finance, and Urban Development of the House Comm. on Small Business, 103d Cong., 1st Sess. 2–3, 7–9, 16, 18, 25–26, 41 (1993); Availability of Credit to Minority-Owned Small Business: Hearing Before the Subcomm. on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Comm. on Banking, Finance and Urban Affairs, 103d Cong., 2d Sess. 19–20, 22, 27 (1994). See generally 61 Fed. Reg. 26,042 26,057–26,058 (1996). Congress's examination of these problems demonstrates quite clearly that discrimination is in part responsible for the condition of firms owned by minorities and by women, and that remedial action is still necessary to ensure that the effects of discrimination do not prevent minority- and women-owned small businesses from competing on an equal footing for the federal expenditures that will be authorized in the new highway and mass transit bill.
>
> In addition, the ISTEA program is narrowly tailored to meet the compelling interest identified by Congress. The ISTEA goals are not quotas, are renegotiated on an annual basis and are not mandatory. Rather, the program allows recipients the flexibility to determine the level of DBE participation appropriate to current local conditions. Moreover, under the current program, agencies are permitted to waive goals when achievement in a particular contract, or even for a specific year, is not possible.[2]
>
> Recent regulations proposed by the Department of Transportation will further ensure that the ISTEA's DBE program is operated in a constitutional manner. The new regulations would require the state or local goal for DBE participation to be based on an assessment of the availability and capacity of DBEs in the state or local construction market. In this way, non-minority firms will not be unfairly disadvantaged by the use of affirmative action measures. The regulations also direct states and localities first to use race-neutral means (such as outreach and technical assistance, or simplifying bonding or surety costs in bid requirements) to achieve their goals; where the state or locality achieves the goal in that manner, affirmative action measures that provide competitive advantages to DBEs would be unnecessary. The regulations also bolster provisions that ensure that firms owned by wealthy individuals will not be certified as DBEs, and clarify that non-minority individuals who also have suffered discrimination can be certified as owners of DBEs and therefore receive the same benefits that may be available to minority-owned DBEs. Finally, the new regulations expand methods by which challenges can be filed by third parties, as well as by state and local officials, where questions are raised about the bona fide status of any firm certified as a DBE.
>
> In sum, as we have stated in defending the ISTEA program in court, the Department of

Footnotes at end of letter.

Justice believes that the ISTEA program is constitutional.

Sincerely,

RAYMOND C. FISHER.

FOOTNOTES

[1]Courts have applied intermediate scrutiny to gender-based affirmative action programs, requiring that such programs serve important governmental objectives and be substantially related to achieving those objectives.

[2]The ISTEA program was addressed in *Adarand* v. *Pena*, 965 F.Supp. 1556 (D. Colo. 1997). On appeal, we have argued that the district court improperly reached the constitutionality of the ISTEA program.

Mr. BAUCUS. Here is another letter signed by many law school professors. I see 40 or 50, I don't know. They have the same conclusion—that the district court's decision in Colorado was wrong; that is, that the program is narrowly tailored and is constitutional.

Now, if that is not enough, the Department of Transportation has new regulations, which go even further, and with more flexibility, to make it even more clear that the program is narrowly tailored. Some Senators spoke up and said, gee, wealthy people are, under this definition, socially disadvantaged. Not true under the new regs. They have a net worth test. If you are wealthy, you don't qualify. There are lots of new provisions in the new regulations that will go into effect. They are in the drafting stage now.

Again, just because a district court judge says it is unconstitutional doesn't make it so. The only thing that does that is a decision by the U.S. Supreme Court. They haven't ruled on this.

Second, many think the judge is wrong—many. Finally, there are new regs which are much more flexible and which clearly make this narrowly tailored. For that reason, this is not unconstitutional because it is fair and helps people and it works. It should remain in the bill.

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. I yield the Senator from Maine such time as she desires.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Thank you, Mr. President.

Mr. President, there is much in the amendment offered by the Senator from Kentucky that I support. I particularly support its expansion of outreach efforts designed to help emerging small businesses compete for Federal contracts.

I think that those specific provisions of the amendment offered by the Senator from Kentucky would truly be very helpful to a lot of small businesses regardless of their ownership. Moreover, I share the opposition of the Senator from Kentucky to numerical quotas. I don't like the numerical quotas that are in current law. Whether or not they are constitutionally suspect, they are certainly inflexible, and they are often unfair.

I am also opposed to creating a permanent entitlement or preference for businesses based upon their ownership by minorities or women. We should be providing such businesses a hand up, not a permanent handout. However, I believe that the amendment offered by the Senator from Kentucky goes too far. In my view, the programs funded under ISTEA should include a nonnumerical goal—not a quota, not a 10-percent set-aside, but a goal aimed at increasing participation by disadvantaged business enterprises.

Unfortunately, the Senator from Kentucky has indicated that he is unwilling to alter his proposal in this manner, and, for that reason, I am going to vote against his amendment.

Mr. President, we all talk about the legalities of this issue. But I would like to try to put a human face on the matter before us. Let me tell you of a specific example of the benefits of the Disadvantaged Business Enterprise Program, a specific case involving a woman from Maine named Tina Woodman. Tina, in her own words, went from being a waitress to being an ironworker, to being the president of her own company. As a matter of fact, I talked with Tina just this afternoon about her story, with which I was already very familiar.

Tina, after receiving specialized training, was able to go from being a waitress for 10 years to learning to be an ironworker, to opening up and becoming president of her own company, Maine Rebar Services. In fact, she and her company worked this past summer on the Casco Bay Bridge project in Maine, one of the largest construction projects our State has ever had.

By building her own business, Tina has not only been able to provide for her 6-year-old daughter, but for the first time in her life she has also been able to buy her own home. She told me, and her daughter told me, that the best part of this was that they could now plant flowers in their own front yard.

Every time I drive across or see the Casco Bay Bridge, I think of Tina Woodman, and I think of her daughter and the flowers growing in their front yard.

All of this wonderful story would never have come about but for the opportunity given to Tina through the Disadvantaged Business Enterprise Program. Hers is the kind of success story that this kind of program can bring about when it is properly applied.

Mr. President, we do need to reform this program. We need to make sure that it is carefully tailored so as to give people a little bit of a hand up so that they can participate in the American dream.

For this reason, Mr. President, I am going to reluctantly oppose the amendment offered by the Senator from Kentucky. I hope, however, that he and others will be willing to work with me in order to reshape these programs.

Thank you, Mr. President. I thank the managers of the bill, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. I yield such time has he may need to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, the 14th amendment to the Constitution of the United States relevant to this discussion reads ''nor shall any State deny to any person within its jurisdiction the equal protection of the laws.''

There was over an extended period of time a debate in the Supreme Court as to whether or not that equal protection clause, applicable by its terms only to States, applied as well to the Federal Government. The Supreme Court has decided that question essentially in the affirmative simply by stating that the fifth amendment to the Constitution, through its due process clause, incorporates the philosophy identical to the equal protection clause in the 14th amendment.

The next debate is over whether or not a nonmember of a minority has the ability to claim discrimination by reason of a provision like the one that is at issue here today. The Supreme Court in the Adarand case, a case already discussed at length during the course of this debate, says, ''The principle of consistency simply means that whenever the Government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and the spirit of the Constitution's guarantee of equal protection.''

Finally, with respect to this provision here, the Court in that case said, ''It follows from that principle that all governmental action based on race, a group classification, long recognized as in most circumstances irrelevant and therefore prohibited, should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection of the laws has not been infringed. A free people whose institutions are founded upon the doctrine of equality should tolerate no retreat from the principle that government may treat people differently because of their race only for the most compelling reasons. Accordingly, we hold today that all racial classifications imposed by whatever Federal, State, or local governmental action must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling government interests.''

As against that, what do we have here? The heart of the amendment proposed by the Senator from Kentucky strikes a section identical to the present law that says, ''Except to the extent that the Secretary determines, otherwise not less than 10 percent of the amounts made available for any program under titles I and II of this

Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.''

The dual statutory definition of ''disadvantaged'' deals with sex and with racial minorities.

Mr. President, I do not see that it can seriously be maintained that a national quota stating ''no less than 10 percent'' can possibly be justified under that Supreme Court language granting neutral equal protection of the laws of the United States to every single individual.

Clearly, the Supreme Court allowed a case-by-case evaluation of disfavored classes, mostly racial minorities, to determine whether or not they had suffered discrimination and, therefore, required specific aid in order to catch up and to be put on an equal plane. But nothing in the portion of this bill which the McConnell amendment would strike speaks to that kind of consideration. It simply says that all of those not defined as disadvantaged in our society are absolutely barred and prohibited from getting certain governmental contracts.

Once again, I read from the Supreme Court decision. ''A free people whose institutions are founded upon the doctrine of equality should tolerate no retreat from the principle that government may treat people differently because of their race only for the most compelling reasons.''

Not only are there no compelling reasons in this section of this bill, there are no reasons at all. Simply 10 percent of contracts are barred from being awarded to any person outside this disfavored class.

Is it any wonder that the district court on remand summarily entered judgment in favor of the plaintiff in that case? Of course. There is no possible way of finding this statute to be constitutional.

That district court opinion is now on appeal in the 10th circuit, I understand. It is possible that the ensuing decision may again be appealed to the Supreme Court. I would give 20-to-1 odds that the Supreme Court will simply deny certiorari since the conclusion is so obvious.

This does not mean that the sponsors of this bill could not have written in this bill a narrowly tailored specific set of preferences for people against whom specific discriminatory actions had been taken, tailoring it to meet the very requirements of the Constitution laid down by the Supreme Court in a decision, the result of which, it seems to me, was obvious.

But, Mr. President, the sponsors of this bill did not do that. Whatever excuse the authors of the previous proposal 5 years ago may have had, the authors of this bill had none. They know what is required in order to discriminate. They ignored the views of the Supreme Court. And they say, we don't care, we are going to continue this flat quota. This is not the affirmative action about which we have been having a legitimate debate over whether or not there ought to be certain forms of assistance provided to disadvantaged people. This is a debate about the most explicit quota one can possibly imagine and it is simply irresponsible for us to continue.

If the sponsors of the bill do not like the specific proposal that is substituted for this quota, proposed by Senator MCCONNELL, fine. Let them come up with one that meets constitutional muster. I think they can. It is just that they have simply not done so to this point.

Mr. President, the preceding speaker has talked about what the advantages of the present system have been, in a simple case. I ask unanimous consent to have printed in the RECORD correspondence from a general contractor, Frank Gurney, Inc., in Spokane, WA.

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

FRANK GURNEY, INC.,
Spokane, WA, October 9, 1997.

Hon. SLADE GORTON,
Hart Senate Building,
Washington, DC.

Re McConnell amendment to the D.B.E. program for Federal aid highway construction.

DEAR SENATOR GORTON: We are a small subcontracting firm in Spokane, Washington. We specialize in highway guardrail and signing. More than 95% of our market is Federal, State or County agency work—funded mostly with State and Federal moneys. We are writing to you on the issue of Affirmative Action. We are *not* a ''woman'' or ''minority'' owned firm—we are simply Americans. My step-father, Frank Gurney, started the firm in 1959—my brothers and I working with him to build the business from nothing. We all worked very hard for a lot of years to make it a good sound company. Frank Gurney passed away in 1989 with the Affirmative Action quotas that discriminated against our Company as the worst nightmare he had ever experienced and could not overcome. Since Frank passed away the nightmare of discrimination for our Company goes on every week at the bidding table as it has for the last 14 years.

So then please find enclosed correspondence regarding the years of discrimination our firm has experienced.

Most Prime Contractors refuse to write these letters because they always fear litigation—they also know that they are in the middle of government mandated discrimination—that it is in fact not only Constitutionally wrong but morally wrong!

Please know that the intent of this letter is to inform you with our documentation of legislation that No. 1, is very constitutionally wrong and No. 2, does not work at all as intended.

Our M.B.E.—W.B.E. competitors in Washington are mainly Junlo Corp. (D.B.A.)—Asian owned, and Peterson Corp. (W.B.E.—Woman owned, from Western Washington along with other out of State M.B.E. firm—Dirt and Aggregate Inc. of Oregon (? owned), Alexander—Martin of Boise, Idaho (W.B.E.) Women owned—Omo Construction of Billings Montana—M.B.E. (Indian owned). We compete with these firms at the bidding table here in the Northwest nearly every week. They are all strong well run firms that have been in business long before the era of Mandatory quotas. We welcome them as competitors on equal footing, but the D.B.E.—M.B.E. quotas in Federal and State funded projects is an unfairness that is very, very hard to overcome. They are larger firms than ours—they need no help—yet they continue to enjoy that advantage of being awarded work that they are not low bidder on simply because of M.B.E.—D.B.E. quotas in government contracts.

We have realized long ago that Affirmative Action attitudes are strongly entrenched in our government—and you as a politician (until possibly now) would view your vote against Affirmative Action as possible ''political suicide'' regardless of your inward belief—it just ''seems so right'' but is so wrong!

We like all conscientious Americans are very much in favor of helping the truly disadvantaged but reverse discrimination and quotas are not the way!!!

The thousands of dollars that our firm was low bidder on through the years could have easily paid for a teacher that would give 25 disadvantage minority children the economic, social and academic headstart that would help them to become responsible mainstream American citizens—but instead those dollars simply lined the pockets of a few that did not need help at all.

It is true—simply look into it with the Washington State Department of Transportation. We of course do not have access to exact numbers but we are most certain that if you were informed of the truth you would find less than 5% of registered M.B.E.—W.B.E. firms in Washington are doing more than 95% of the quota dollars and that most of these firms doing 95% of the dollars should have graduated from the program long ago—but they remain in the program simply because they are unchallenged. There is no course of action allowing the Washington Department of Transportation, The Idaho Transportation Department, or the Montana Department of Transportation or anyone else to challenge them. They are the same firms—week after week—month after month—year after year that fill the quota requirements. These firms then squeeze out and suffocate other smaller minority owned firms that try to get started. After an on going gift of 14 years—the large and established minority owned firms can and do price the small ''Trying to get going'' minority firm out and it is usually does not take very long at prices below cost to do so. So then none of the Department of Transportation want these larger firms out of their programs because they are needed to comply with the legislative quotas that come with Federal Dollars. We on the excluded side of this program are an exact mirror of the ''Adarand'' guardrail firm in Colorado which now is the focus of the Supreme Court ruling—and until now we all know that the courts of America have strongly ruled in favor of M.B.E.—W.B.E. regardless of the nature of litigation. Litigation that no small company such as ours could ever afford without financial ruination—which would occur before a challenge could ever be heard.

We are not insinuating that anyone in the Department of Transportation or any other agency is doing anything wrong—in fact they are simply doing their job carrying out the wishes of Congress. We are simply trying to display the poor investment of tax dollars under the stewardship of Congress that does not do as it was intended and is compounded with promulgating more discrimination—that very same discrimination that our country is trying to abate!!!

Our firm is not unlike any other small white male owned firm in America that suffer daily from the discrimination promulgated by the government of the United States in its contracting policies.

We believe that God created us all equal. The Constitution of the United States—the

most powerful document of democracy the world has ever known, clearly was written by our Founding Fathers—that is God created all men equal then it follows that the document of the Constitution would be so written that is govern all men and women under it as equals. So then why are we not being governed equally? Our government now has preferences based on race and color—the Government has simply uprooted and set the Constitution aside and entered the business of discrimination.

It is wrong.

We, again would like to affirm that we are simply displaying our experience so that indeed you may be informed with knowledge of the reality regarding this very difficult issue—thus the attached sampling of correspondence from our very large files. We love our Country—we pay our taxes and we play by the rules. We, again, do believe in helping the truly disadvantaged and would and do very much support programs that do so—but mandatory goals and quotas are again simply not the way.

Sincerely,

THOMAS STEWART,
President.

STEELMAN-DUFF, INC.,
Clarkston, WA, July 17, 1996.

Mr. TOM STEWART
Frank Gurney, Inc.
Spokane, WA.

Re Contract no. 4916, East Lewis Street Interchange.
Subject: Quote.

DEAR TOM: This letter is written as per our conversation regarding your recent quotation on subject project. I had informed you that you were apparent low quote on bid items 72, 73, 74 and 75, but due to MBE and WBE goals I could not utilize you. Your quote on the above bid items amounted to $29,031.27. Petersen Brothers, a WBE firm quoted $31,902.00 for the same work. I was forced to utilize the WBE firm as the difference in your two quotes was very small and created the least amount of inflation to meet assigned goals.

We thank you for your quote and understand your situation. We are forced to inflate our bids to cover added costs on all Federal, State, County and City projects that have DBE, MBE or WBE goals assigned. This particular project the added cost ranged in the vicinity of $20,000.00.

We trust you understand and if added information is needed, please contact us.

Very truly yours,

WAYNE L. VAN ZANTE,
Vice President.

ASSOCIATED SAND & GRAVEL CO., INC.,
Everett, WA, April 7, 1981.

Frank Gurney Inc.
Spokane, WA.

Re State highway bid for SR 90, Tyler to Salnave Road, bid date April 1, 1981.

GENTLEMEN: We acknowledge receipt of and we thank you for your guard rail quotation for subject project.

While your bid was lower than the quotation we used in preparing our bid, we were obligated to use the higher quotation to satisfy the 6% Minority Business Enterprise goal as set forth in the specifications for subject project.

While we were unable to use your lower price quotation, we trust you will continue to quote prices to our firm on future projects.

Very truly yours,

JACK ZEIGLER,
Chief Estimator.

ROBERT B. GOEBEL
GENERAL CONTRACTOR, INC.
Spokane, WA, April 25, 1996.

Frank Gurney, Inc.
Spokane, WA.

Attn: Tom Stewart.
Re Laurier Bridge replacement, Stevens County, WA, CRP–601A; BROS–2033 (018); 5A–2802.

GENTLEMEN: We were apparent low bidder at $1,393,851.00 on the referenced project which bid on 4/23/96 at 11:00 AM.

We received two bids from guard rail subcontractors:

(1) Gurney: $29,598.00.
(2) Petersen Brothers (DBE): $34,745.25.

As you know, there was a 10% DBE requirement in the solicitation documents, which amounted to just under $140,000.00. Even though you were significantly lower than Petersen Brothers, we regret to inform you that we felt compelled to use their amount to help achieve our DBE goal.

Sincerely,

STEVEN R. GOEBEL.

GILMAN CONSTRUCTION,
May 1, 1995.

Frank Gurney Inc.,
Spokane, WA.

Attn: Tom Stewart.
Re Monida-Lima.

DEAR TOM: We would like to thank you for your guard rail quotation on the Lima-Monida Project. Although you had the low guard rail quotation, we were forced to use a higher quotation to meet our DBE requirements.

Listed below are the guard rail prices we received on the project:

Frank Gurney, Inc.—142,906.45.
Omo Construction, Inc.—150,351.55.
Scott Long Construction—151,278.00.

Once again, we would like to thank you for your quotation and hope you will continue to quote any future work.

Sincerely,

GEORGE M. FRIEZ,
Engineer.

WESTWAY CONSTRUCTION, INC.,
Nine Mile Falls, WA, June 28, 1995.

FRANK GURNEY, INC.,
Spokane, WA.

Attn: Tom Stewart.
Re: SR 27 & 23 bridge rail update/bridge replacement.

TOM: We regret we cannot use your quotation for this project. Although your price for the guardrail items was $2000.00 lower than Petersen Brothers, we were unable to use you as we needed Petersen to meet our DBE goal.

Sincerely;

MARK JOHNSON,
Estimator.

FRANK GURNEY INC.,
Spokane, WA, October 29, 1997.

SENATOR SLADE GORTON,
Hart Senate Building,
Washington, DC.

DEAR SENATOR GORTON: Please find another letter of rejection attached that we just received today from Inland Asphalt Company of Spokane. Peterson Bros. is a well run firm—larger than ours—that is—and has—for 15 years—benefited from your discriminatory ''Quota'' affirmative action policies and legislation. We are not crying ''Sour Grapes'' or ''Belly Aching'' we simply are again wondering how you would feel if this were you in receipt of letter after letter of this rejection (our file has many of them—dating throughout 16 years) How would you feel about displaying this letter to your employees and your family. How do I tell my sons—who work in the company—and my employees; not to hold prejudice? I don't know—I only know I really don't know—I only know that it is wrong! Very Very wrong—yet promulgation of this wrong continues in America by our Government. It surely seems that the very discrimination that you as government are trying to abate simply continues with you at the top of the list as its greatest advocate. We expect as usual no response—of course realizing we are the ''down side'' of the ''greater good''—regardless of right or wrong.

Sincerely,

THOMAS C. STEWART,
President.

INLAND ASPHALT CO.,
Spokane, WA, October 27, 1997.

TOM STEWART, P.E.,
Frank Gurney, Inc.,
Spokane, WA.

DEAR TOM: I regret to inform you that although yours was the lowest guardrail quote that I received for the WSDOT Project SR 26 to Lind Coulee Bridge, I found it necessary to use the third lowest guardrail quote in order to meet the DOT requirement of 10% DBE. The second low guardrail quote was from Coral Construction Company but they also are not a DBE firm. The third lowest quardrail quote and lowest DBE guardrail quote came from Petersen Brothers, Inc. (DBE/WBE #D2F0901575). By using Petersen Brothers, Inc., along with DBE traffic control and planing, we were able to just barely meet the 10% DBE requirement at a cost of $11,768.76 to the project.

We at Inland Asphalt Company think highly of the professionalism and quality of work that we have always received from Frank Gurney, Inc. I hope that this does not discourage you from quoting us on future projects.

If you have any questions, please call me at 536–2631.

Sincerely,

LEE T. BERNARDI,
Project Manager.

Mr. GORTON. This illustrates what happened in the real world. It includes a half dozen responses to this small business company with respect to contract submissions in which it was the low bidder, in which the general contractor says, we would like to have picked you, we would have saved money for the taxpayers had we picked you, but we cannot pick you because of absolute orders from the Department of Transportation because of a quota system.

Ironically, the winning high bidders in several of these contracts are larger business enterprises than is Frank Gurney, Inc., with a longer history. The net result is fewer roads are built and improved in order to provide contracts for people less disadvantaged than the low bidder. That is the real world impact of what we have done here.

The Senator from Kentucky knows that we have certain disagreements over what the affirmative language in his amendment should have included. I would have done it somewhat differently. But I am here because I believe that the fundamental approach he has taken to strike an express percentage racial quota is not only the only appropriate response under the Constitution but is the only appropriate,

just response in a society based on the proposition that people deserve equal treatment and only equal treatment.

Mr. President, it seems to me that this is an open-and-shut case. We should repeal the sections to be stricken here. If a majority of this body believes in a form of affirmative action, then it should devise a form of affirmative action that meets the strict-scrutiny standards set down by the Supreme Court and does not include a quota system that is entirely unrelated to whether or not its beneficiaries have ever suffered any discrimination whatsoever.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, there are many lawyers in the Senate, some out in the land believe too many. But it is my judgment that the finest lawyer in the Senate is the Senator from Washington. I thank him for his clear explanation of what the law demands in this situation.

No effort by the other side to obscure the obvious, it seems to me, should fool anyone. The Senator from Washington has laid it out with extraordinary clarity. This provision in the bill before us is unconstitutional. I thank the Senator from Washington for his support of the Constitution.

Mr. President, a number of the opponents of the amendment have said they know discrimination exists in this kind of economic activity because the numbers of minority participants have dropped in Michigan and in Louisiana. Colleagues have lamented the loss of the DBE programs in those two States, Louisiana and Michigan, but what they fail to point out was that those DBE programs were terminated based on court decisions that held that the preferences were unconstitutional, and that is, of course, precisely what we are discussing here today, the constitutionality of these kinds of race-based set-asides.

Even the Department of Transportation has quietly conceded that disparity figures do not prove discrimination. Let me share this quiet concession buried in the jungle of Federal regulations. The administration notes that:

> Minority firms may receive less work because of the following reasons: Lack of interest in the work, other commitments, limitations of the amount of work they can handle or lack of qualifications, especially where a State spends a large portion of its funds on a single large project requiring special contractors.

There has been some suggestion by those opposing the amendment that the Adarand case not only wasn't determinative of the race-based set-aside in this bill, but it somehow is an isolated case. The Congressional Research Service has found no—I repeat no—court ruling after a trial where a race-based contracting program has met the Supreme Court test of strict scrutiny. Let me say that one more time. There has been an effort to portray the Adarand case as kind of an aberration, or actually not determinative, not really on point. The fact of the matter is it is just one more in a whole series of cases indicating that these kinds of race-based programs are unconstitutional. In fact, CRS has explained that Adarand conforms to a pattern of Federal rulings across the country, striking down race-based contracting programs as unconstitutional. Let me just mention some of them: Associated General Contractors of California v. San Francisco. That was in the ninth circuit. Michigan Road Builders Assoc. v. Milliken, which was in the sixth circuit; Groves & Sons Co. v. Fulton County, which was in the seventh circuit; Associated General Contractors of Connecticut v. New Haven; O'Donnell Construction Company v. the District of Columbia, in the D.C. circuit; Arrow Office Supply v. Detroit, a Michigan case; Louisiana Associated General Contractors v. Louisiana, Associated General Contractors of America v. Columbus; Engineering Contractors Ass'n of South Florida v. Metropolitan Dade County in the 11th circuit; Contractors Ass'n of Eastern Pennsylvania v. Philadelphia, in the third circuit; Monterey Mechanical v. Wilson in the ninth circuit, just last September; Houston Contractors Association v. Metropolitan Transit, which is in the Southern District of Texas, November 13 of last year, 1997.

Quoting from the Houston Contractors case, right out of the case, the District Court for the Southern District of Texas, the court said:

> Because race is inescapably arbitrary, basing governmental action on race offends the American Constitution.

The court went on to say:

> Assigning governmental benefits to people by their skin color does not quit being arbitrary because the advocates claim that a program has a progressive purpose; a principle wrong for Eugene Talmadge is wrong for Jesse Jackson.

The court went on to say:

> Nothing about transportation depends upon the race of the person—not employees, officers, taxpayers, riders, suppliers, or contractors.

It has been suggested that these are all sorts of lower court decisions and somehow they are off on their own or something, not following the mandate of the Supreme Court.

In the Croson case, way back in 1989, the Court said that:

> . . . a generalized assertion that there has been past discrimination in an entire industry provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy. It ''has no logical stopping point.''

The Court went on to say:

> ''Relief'' for such an ill-defined wrong could extend until the percentage of public contracts awarded to MBE's in Richmond mirrored the percentage of minorities in the population as a whole.
>
> Appellant argues that it is attempting to remedy various forms of past discrimination that are alleged to be responsible for the small number of minority businesses in the local contracting industry. Among these the city cites the exclusion of blacks from skilled construction trade unions and training programs. This past discrimination [the Court said] has prevented them ''from following the traditional path from laborer to entrepreneur.'' [That is the city talking.] The city also lists a host of nonracial factors which would seem to face a member of any racial group attempting to establish a new business enterprise, such as deficiencies in working capital, inability to meet bonding requirements, unfamiliarity with bidding procedures, and disability cased by an inadequate track record.
>
> While there is no doubt that the sorry history of both private and public discrimination in this country has contributed to a lack of opportunities for black entrepreneurs, this observation, standing alone, [standing alone] cannot justify a rigid racial quota in the awarding of public contracts in Richmond, Virginia. . . . [A]n amorphous claim that there has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota.
>
> It is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination, just as it was sheer speculation how many minority medical students would have been admitted to the medical school at Davis absent past discrimination in educational opportunities. Defining these sorts of injuries as ''identified discrimination'' would give local governments license to create a patchwork of racial preferences based on statistical generalizations about any particular field of endeavor.

So the Court concluded:

> The 30% quota cannot in any realistic sense be tied to any injury suffered by anyone.

So the Court said:

> We, therefore, hold that the city has failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race. To accept Richmond's claim that past societal discrimination alone can serve as the basis for rigid racial preferences would be to open the door to competing claims for ''remedial relief'' for every disadvantaged group. The dream of a Nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs. ''Courts would be asked to evaluate the extent of the prejudice and consequent harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classifications. . . .'' We think such a result would be contrary to both the letter and spirit of a constitutional provision whose central command is equality.

The Court went on:

> There is absolutely no evidence of past discrimination against Spanish-speaking, Oriental, Indian, Eskimo or Aleut [Indian] persons in any aspect of the Richmond construction industry. . . . It may well be that Richmond has never had an Aleut or Eskimo citizen [the Court said]. The random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond suggests that perhaps the city's purpose was not in fact to remedy past discrimination.

If a 30% set-aside was ''narrowly tailored'' to compensate black contractors for past discrimination, one may legitimately ask why they are forced to share this ''remedial relief'' with an Aleut citizen who moves to

Richmond tomorrow? The gross overinclusiveness of Richmond's racial preference strongly impugns the city's claim of remedial motivation.

Mr. President, even if by way of some disparity study mirror this administration could show a finding of specific, pervasive discrimination in the highway contracting arena, the administration would still be unable to show that the ISTEA quota is narrowly tailored to remedy that alleged past discrimination. ISTEA and the DBE Program funnels not less than 10 percent of Federal highway funds to disadvantaged business enterprises. The Government presumes that an individual is disadvantaged if that individual can trace his or her roots to one of over 100 different countries. These countries range from Argentina to Spain and Portugal to Sri Lanka and Madagascar to Japan and to the Fiji Islands.

Just look at the map I have to my right. If you are from one of the countries with a ''P'' on it—it is probably hard for people to see—you are in the preferred group. Look at the worldwide web of preferences that we have created, and who can figure out this web? If you happen to be from these countries, you get a preference. If you happen to have emigrated from some other country, you do not.

If you are so unfortunate as to be from Poland, you are out of luck; you actually have to compete and win on the merits. But if you are from Pakistan, you are in the preferred group.

If you are from Nigeria, you are disadvantaged, but if you are from Algeria, you are not disadvantaged.

If you are from Spain or Portugal, you are disadvantaged, but if you are from Bosnia, you are not disadvantaged.

If you are from Israel, you are not disadvantaged, but if you are from Pakistan, you are disadvantaged.

If you are from China or Japan, then you get a preference, but if you are from Russia, sorry, you don't get a preference.

If you are from the Fiji Islands, it is your lucky day; you win the preference prize. But if you are from New Zealand or are an Australian Aborigine, you lose; you are not disadvantaged.

In the Adarand case, the plaintiff explained this overbreadth problem to the Supreme Court. Specifically, the plaintiff's lawyers stated in oral argument:

> We have a situation here where a Hong Kong banker, a Japanese electrical engineer, or the son of landed gentry from Spain could come to Colorado Springs and . . . [run] a [Disadvantaged Business Enterprise].

And, in fact, the district court in Adarand agreed the DBE program is so overly broad that it violates not only common sense, but it violates the Constitution. Indeed, under these standards, as Senator ASHCROFT and others have mentioned, the Sultan of Brunei would qualify as disadvantaged.

By the way, let me tell you a little about our friend, the disadvantaged sultan. This is a man who has an estimated $40 billion fortune, making him the wealthiest monarch in the world. He lives in a sprawling palace, which you can see reflected in this picture, the palace of the Sultan of Brunei. This palace has 22-karat gold-plated mosque domes and 37 types of marble. He has 150 Rolls Royces. And if that is not enough, the sultan keeps his prize thoroughbred horses in hundreds of air-conditioned stables.

So, the sultan could leave his estate in Brunei, forsake his Rolls Royces, abandon his horses in their air-conditioned stables, and then move to my home State of Kentucky and get a bid preference as a DBE over a contractor from the hills of Appalachia. Mr. President, something is wrong with this picture.

In 1980, Justice Stewart poignantly explained what was wrong with this picture. To quote Justice Stewart directly, Congress has ''necessarily paint[ed] with too broad a brush.''

He said:

> In today's society, it constitutes far too gross an oversimplification to assume that—

And this was in 1980—

> every single Negro, Spanish-speaking citizen, Oriental, Indian, Eskimo and Aleut potentially interested in construction contracting currently suffers from the effects of past or present racial discrimination. Since the . . . set-aside must be viewed as resting upon such an assumption, it necessarily paints with too broad a brush. Except to make whole the identified victims of racial discrimination, the guarantee of equal protection prohibits the government from taking detrimental action against innocent people on the basis of the sins of others of their own race.

Congress has a substantial burden of ''inquir[ing] into whether or not the particular [entity] seeking a racial preference has suffered from the effects of past discrimination.''

This is what they were talking about in the Croson case, a Supreme Court case.

Again, let me quote the Supreme Court:

> The random inclusion of racial groups, that as a practical matter, may have never suffered from discrimination in the construction industry . . . suggests that perhaps the . . . purpose was not in fact to remedy past discrimination . . . The gross overinclusiveness of [a government's] racial preferences strongly impugns the . . . claim of remedial motivation.
>
> If there is no duty to attempt either to measure the recovery by the wrong or to distribute that recovery within the injured class in an evenhanded way, our history will adequately support a legislative preference for almost any ethnic, religious or racial group with the political strength to negotiate ''a piece of the action'' for its members.

Again quoting Croson.

Or, as the Fifth Circuit Court of Appeals recently explained in striking down racial preferences:

> A broad program that sweeps in all minorities with a remedy that is in no way related to past harms cannot survive constitutional scrutiny.

Hopwood v. the State of Texas.

As I have explain today, the Government has placed the stamp of disadvantaged on a stupefying array of groups—groups and individuals that are not similarly situated.

As Professor LaNoue has explained:

> Some of the groups on the presumptively eligible list have been in this country since its beginning; some are very recent arrivals. Some are relatively poor; some are relatively affluent. Some have very high rates of business formation; some are very low. Some have well-documented histories of discrimination; some are virtually invisible.

Again quoting Justice Stevens:

> The statutory definition of the preferred class includes ''citizens of the United States who are [black], Spanish-speaking, Orientals, Indians, Eskimos and Aleuts.'' . . . There is not one word in the remainder of the Act or in the legislative history that explains why any Congressman or Senator favored this particular definition over any other or that identifies the common characteristics that every member of the preferred class was believed to share. Nor does the Act or its history explain why 10 percent of the total appropriation was the proper amount to set aside for investors in each of the six racial subclasses.

In summary, as numerous speakers have said, the DBE program is not narrowly tailored. As the district court concluded in Adarand just this last summer, directly from the court:

> I find it difficult to envisage a race-based classification that is narrowly tailored. By its very nature, such a program is both underinclusive and overinclusive. This seemingly contradictory result suggests that the criteria are lacking in substance as well as in reason.

Or as the Supreme Court held in Croson, a program is unconstitutional where ''a successful black, Hispanic or Oriental entrepreneur from anywhere in the country enjoys an absolute preference over other citizens based solely on their race. We think it obvious that such a program is not narrowly tailored to remedy the effects of prior discrimination.

I cannot imagine how the courts would spell this one out any clearer for us. This program is not designed to remedy past discrimination, it is not narrowly tailored by any stretch of the imagination, and it is plainly and clearly, as the distinguished Senator from Washington so eloquently put it a few moments ago, not constitutional.

Mr. President, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I know the distinguished Senator from Illinois wishes to speak, and I will be very brief in commenting.

I have listened to the learned Senator from Kentucky speak this afternoon. He spent a lot of time on the Adarand decision. The only thing we ought to stress about the Adarand decision is that the Adarand decision was a 5–4 decision that did not find that affirmative action is not possible to have in our country. Indeed, I will give you a couple of quotes from—I like to go to the Supreme Court. I am not big on

district courts and circuit courts. Yes, they are nice, but I like to go to the top and see what the top people have to say. This is what Justice O'Connor said:

> It is not true that strict scrutiny is strict in theory but fatal in fact. Government is not disqualified from acting in response to the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country.

Later on, Justice O'Connor stated for the majority:

> When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the narrow tailoring test.

So it can be done, and affirmative action is not unconstitutional. If that is the implication that is derived from the remarks of the Senator from Kentucky, I say it is just plain not accurate.

Mr. BAUCUS. Mr. President, I yield 20 minutes to the very distinguished Senator from Illinois, Ms. MOSELEY-BRAUN.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 20 minutes.

Ms. MOSELEY-BRAUN. Mr. President, thank you. I rise in strong opposition to the pending amendment that would dismantle the Department of Transportation's affirmative action programs and roll back 15 years of gains that have been made by minority and women contractors.

The Department of Transportation's DBE program, Disadvantaged Business Enterprise Program, ensures that small women- and minority-owned companies have the opportunity to participate in the Federal aid highway program. It does not guarantee anything; it simply allows an opportunity to compete. It levels the playing field, giving small and women-owned businesses and minority-owned businesses an equal opportunity to submit winning bids. The DBE program is fair; it is necessary, and it works.

This program—and let me suggest another way to look at this issue, Mr. President—the DBE program is no more and no less than a structural response to a structural distortion of our society, a distortion that is caused by 200 years of slavery and segregation and, frankly, the status of women and an age-old tradition that set women apart as second-class citizens as well. It responds to the unfortunate but obvious fact that our society was constructed on the traditional station of women and minorities.

Women do not earn 75 percent of the earnings of men who have the same jobs because they are 25 percent less competent or because they pay 25 percent less for food. African Americans are not proportionally poorer, sicker, more imprisoned, or less educated because of accident but, again, because of those distortions created in today's society by those institutional structures that were crafted centuries and decades ago.

The DBE program addresses these underlying realities. It helps to weave thousands of small businesses into the fabric of our economy and our society. It creates for us a stronger Nation. A society that taps the talent of 100 percent of its people is a stronger society because it can draw on a broader pool of talent. A community that gives all of its members a chance to contribute to the maximum extent of their abilities is a stronger community because it benefits from a broader range of contributions.

America is never so magnificent as when she reflects her nobler tradition. Justice and equality, opportunity based on merit and capacity—these are among some of the defining values of our country, and these values are reflected in this DBE program.

The debate over the DBE program has so far been characterized by distortion of the structure and the results of the program. I have heard more than a few in the debate this afternoon. The facts are, it is a fair program that operates within the bounds of the Constitution. It has worked well, and it has created opportunities for thousands of minority- and women-owned businesses.

I have heard a lot of conversation about the constitutionality. I point out, Mr. President, if you read the Constitution of the United States—and here is a copy. I took Senator BYRD's advice and I carry mine around with me. If you read article I, it is very clear that Americans of African descent were not citizens of this great country when the Constitution was written. Similarly, women were not voters of this country when this Constitution was written. Americans of African descent did not receive the rights of citizenship until the passage of the 14th and 15th amendments in 1868, and women were not enfranchised to vote in this country until this century, until 1920, with the passage of the 19th amendment. But ours is a living Constitution. And it is a Constitution that changes over time to reflect the realities of the community as a whole, to keep the core values as it adjusts to changes in the makeup and composition and demographics of the country.

This Constitution has lived so long precisely because it responds to distortions in our society, precisely because it adapts itself to the realities of the time, and because it continues to reflect those core values that bring us together and make us all Americans. And the fact of the matter is that this legislation is constitutional, as has been discussed on this floor.

In 1982, Mr. President, Congress established a national goal for at least 10 percent of Federal highway and transit project funds to be expended with small businesses owned and controlled by socially and economically disadvantaged people.

In 1987, Congress extended this initiative to include women-owned businesses. And in 1991, the program was first included in ISTEA, which is, of course, the legislation that is sought to be amended today. President Reagan signed the 1982 and 1987 measures into law; and President Bush signed the 1991 legislation, again, to bring women, to bring minorities into the economic mainstream of our country.

I will make one other point. This is another digression. But I have listened to the debate today. And even on the screen when this gets broadcast on C-SPAN, it says, ''Amendment re minorities.'' This legislation is not just about minorities, Mr. President. It is about women as well. And we need to make certain that every person who listens to this debate understands that by casting it just in terms of minorities, it changes the focus of the debate, it becomes a subterfuge for a set of buzzwords that, frankly, in my opinion, do not reflect well on this Senate and on this debate.

Under the Federal DBE program, State and local governments work to achieve goals they set for themselves based on the ability of qualified disadvantaged businesses in their areas, without quotas, without set-asides, and without penalty if they fail to meet their goals after good-faith efforts.

In 1996, most States set 10 percent goals for themselves. Some States set higher goals, up to 14 and 16 percent. Only three States failed altogether to achieve their DBE goals in 1996. And only two States failed to reach 10 percent. Most States exceeded their DBE goals, in some cases by large margins.

In my home State of Illinois, which set a 10 percent goal for itself in 1996, 15 percent of its highway construction funds were awarded to DBEs. Again, you are talking all minorities, you are talking all women. So you are really talking about a majority minority set-aside, if you think about it, because if you take women as a proportion of the population, you take minorities, all of them as a proportion of the population, what you really have is a majority of the population. Again, this legislation simply seeks to address a structural distortion in which that majority of the population participates at an unduly low and restrictive level of our economic activity.

The DBE program is flexible in its work. In 1980, DBE participation in Federal highway construction was only 3.6 percent—again for the majority of the population of this country. Only 3.6 percent of the contracts given out by the Federal highway construction efforts were for DBEs.

DBEs realized small gains over the next couple years when the Department of Transportation encouraged participation. Sharp gains were made, however, after Congress put the program into the law in 1982. DBE participation climbed to almost 17 percent in 1984, and it has hovered around 15 percent ever since.

Now, who are the disadvantaged business enterprises? In 1996, DBEs again received slightly less than 15 percent of

the Federal-aid highway construction money. Of that small slice, again, here we are—14.8 percent. This is everybody. These are women, minorities, Hispanics, Asians, Native Americans—these are all the majority minority of the population that is described as ''minorities'' in the debate. They got all of 14 percent of Federal highway spending.

Remember, we are all taxpayers now. Everybody is in the pool putting money in to make this happen, but 14 percent went out to women- and minority-owned businesses in 1996. And 85 percent went to the traditional white male business owners.

Now that is just the reality. This is not about taking anything away from anybody. But it has to be said, and in very clear terms. Here is everybody else. This is the traditional economics. This is a reflection of an attempt to address a distortion in our society that comes out of the tradition of excluding women and minorities. The exclusions are no longer there, but inclusion has not yet happened. Integration has not yet happened. And that is why this debate is so vitally important.

Let us take a look for a moment at the division within this 14.8 percent. African Americans are 14 percent of the 14 percent. Native Americans are 9 percent of the 14 percent. Asian Americans are 3 percent; Asian Pacific, 3 percent of the 14 percent; Asian Indian, 3 percent of the 14 percent. And we are not talking about the Sultan of Brunei either. He is not involved with any of this. We are talking about citizens of this great country. Hispanic Americans, 20 percent of this 14 percent. But look at this, Mr. President, 51 percent—51 percent—of this 14 percent are women-owned businesses.

I ask the question why 50 percent of the conversation that has been going on this afternoon has not talked about the impacts on women that this repeal, if it is successful, will cause?

So the DBE program then redresses gender discrimination as much as it does lingering racial imbalances. It provides economic opportunities for businesses and entrepreneurs who would otherwise be shut out of the construction industry. I have received a number of letters from DBEs urging me to oppose this effort to repeal the program, letters from women and minorities who own and operate small business, small construction firms in all corners of Illinois.

Their letters ask for the continued opportunity to compete. They drive home the point that the DBE program is not about taking contracts away from qualified male-owned businesses and handing them to unqualified female-owned firms. The program is not about denying contracts to Caucasian low-bidders in favor of higher bids that happen to have been submitted by Hispanic or African Americans or Asians or women.

Instead, this program is about creating a climate of competition that brings everybody in. That is what all these business owners in Illinois want, the opportunity to compete. They want a level playing field in which to make the case that they can do the best job for the taxpayers for the least amount of money. They just want a fair chance.

Listen to a letter from Sharon Arnold, who is president of SSACC, Inc., a certified women-owned disadvantaged business enterprise in Pontiac, IL:

> I know that without the [DBE] program I would lose the opportunity to compete. That is all this program does for me; it gives me the opportunity to compete.

Ms. Arnold started her construction firm in 1986, the year before Congress added women to the DBE program. She writes that at the time ''I was certain I had made the biggest mistake of my life. Contractors who I had been working with in the bidding process [as a former employee at another construction firm] had no interest [at all] in what I was trying to accomplish . . . Now, the reality is, they still don't care unless my . . . prices are the lowest. In this program competition is the name of the game.''

Mr. President, that is the basic concept of the DBE program. Low bids still get the contracts. The program does not create special preferences for more expensive or less qualified bidders. It does not increase the cost of highway construction.

The General Accounting Office has in fact examined this issue and concluded that the program results in less than a 1 percent increase in construction costs—1 percent, Mr. President—to begin to correct some structural distortions that everybody here in this room and certainly everybody in this country knows we have to be able to correct and resolve.

All the DBE program does is open doors. Again, listen to Victor Wicks, President of Wicks Construction Services in southern Illinois. This is a man.

> The DBE program is an economic development program for both minority- and women-owned businesses. The program merely levels the playing field for minorities and women and affords them an equal opportunity to compete for federal construction dollars. . . . All we are asking for is a fair chance—an equal opportunity—a level playing field, for all Americans.

That is what the DBE program provides for Mr. Wicks and the rest of the thousands of qualified disadvantaged businesses across this country.

Mr. President, there has been some debate over whether the DBE program is constitutional in light of the Supreme Court decision in the case of Adarand Constructors v. Pena. Some of my colleagues have asserted that the Senate must ''bring ISTEA into compliance with Adarand and the Constitution.''

The fact is, the Senate need not do anything except extend current law in order to keep ISTEA in compliance with Adarand and the Constitution. The DBE program was not declared unconstitutional. On the contrary, the Supreme Court wrote the Federal Government must subject affirmative action programs to ''strict scrutiny,'' meaning that the programs must be ''narrowly tailored'' to meet a ''compelling government interest.''

The Court, in fact, explicitly stated that affirmative action is still a necessary function of our Government. And it wrote:

> The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and the government is not disqualified from acting in response to it.

Mr. President, the ''lingering effects of racial discrimination'' of which the Court spoke are exactly the distortions in our society that I referenced earlier. Racism and sexism are indeed unhappy, but still very real, phenomena in our society. The DBE program is one of our responses to those lingering effects, and it works.

Anyone who thinks there is not a ''compelling government interest'' to justify the DBE program need only to look at the States that do not have them in place for their State-funded highway construction programs.

Data from these States provide side by side comparisons of two construction programs within each State—the Federal-aid highway program, which includes a DBE initiative; and those States' own highway programs for non-Federal-aid highways, which do not include DBE programs.

I want you to consider the following examples from fiscal year 1996.

In Arizona, DBEs received only 3.8 percent of State-funded highway construction dollars, State funded. They received 8.9 percent of the Federal-aid highway program. Again, DBE exists here; it does not exist there.

In Arkansas, 2.9 percent of State dollars; 11.9 percent of Federal dollars. DBE program here; did not exist there.

In Delaware, DBEs received less than 1 percent—less than 1 percent of State-funded highway construction dollars, while they received 12.7 percent of the Federal-aid highway funds in that State.

The next one, the DBEs in Louisiana received only .4 percent —.4 percent—of funds under the State's highway construction program, which does not include a DBE initiative. They received 12.4 percent of funds awarded by the Federal program.

In Michigan, another State without a DBE program, DBEs received only 1.4 percent of State highway construction funds. By contrast, they received 15 percent of Federal highway construction funds.

I can go through Missouri, Nebraska, Oregon—Rhode Island, look at this. In Rhode Island we have the State program without a DBE program, and the State effort is zero percent for all the women and minorities put together. Zero percent of the State highway construction funds; 12 percent of the Federal highway construction funds where there was a DBE program.

Now, this evidence, Mr. President, is incontrovertible. Where there are no DBE programs, women- and minority-owned small businesses are shut out of the highway construction. The Federal DBE program serves to redress the inequality and redress the unfortunate fact that all across the country women and minorities would not otherwise have access to construction contracts.

Now, consider another example—the State of Michigan. In the second quarter of fiscal year 1989, the State of Michigan awarded 5 percent of its highway construction funds to small and minority-owned businesses, and 9.9 percent to small women-owned businesses. Again, I make the point that this debate has been focused on minorities, but it is women that are just as much at risk from this amendment as minorities. Near the end of that quarter, the State ended its DBE program. OK. Here we are right here. So 9.9 percent, 5 percent. Then the end of the program. Within 6 months, by the fourth quarter of that same fiscal year, minority disadvantaged businesses were completely shut out of the State's highway construction program. Less than 1 percent—.6 percent. They received zero contracts. By the first quarter of the following year, women were down to only 1.7 percent of the State's highway programs, down from 9.9 percent.

So this was the experience. Look at this. Here we go. Just totally wiped out from the modest gains that had been made in that State.

Well, Mr. President, that is exactly what would happen if we ended the Federal DBE program. Women- and minority-owned small construction companies would go out of business by the hundreds of thousands.

I have to ask the question, is that really the result we want to have coming out of this debate? Is that really the legacy that the 105th Congress would like to impart on transportation policy—a legacy of no economic opportunity for thousands and thousands of small businesses?

Nationwide, minorities represent 9 percent of all construction funds but receive only about 5 percent of all business receipts. That is overall—9 percent of all funds but 5 percent of all receipts. Women, who own one-third of all firms, get only 19 percent of business receipts. Let us not see 1998 go down as the year in which those opportunities to compete were further eroded.

I urge all of my colleagues to consider the facts—the fact that the DBE Program is constitutional, that it is a program of economic opportunity, that it is a program of fairness, and that it is a program that works. I urge my colleagues to cast their votes for the ideals of opportunity and equality, which describe our Nation, which are described in this Constitution, in this living document.

More to the point, Mr. President, I urge my colleagues to move beyond the politics of division and zero-sum games. Those who oppose having this modest opportunity provided for women and minorities—this modest step to correct a structural distortion that has existed in our country since its founding, this tiny step to bring women and minorities into the economic mainstream and to integrate the business of our country—those who would oppose that are pushing buttons to divide Americans; to pit one against the other; to say this is a zero-sum game, you can't progress, you can't be integrated in this society without someone losing out. No one loses out in this program. No one loses out from opening up the doors of opportunity.

Indeed, opportunity to compete, to have a level playing field, to move beyond race and gender, is what this country has got to be about. I urge my colleagues to reject this ill-considered amendment.

Mr. McCONNELL. I yield to the distinguished Senator from Michigan such time as he may need.

Mr. ABRAHAM. Mr. President, I rise to discuss the amendment of the Senator from Kentucky to the ISTEA legislation. Mr. President, the Supreme Court decision in Adarand v. Pena appears to mean that section 1111 of the existing ISTEA legislation is unconstitutional. That being the case, it is our duty, in my view, to replace this provision with one that meets the test of constitutionality.

In its Adarand decision, the Supreme Court held that programs that create race-based preferences must be narrowly tailored to further a compelling governmental interest. On remand, the Federal District Court determined that the presumption of social and economic disadvantage on account of race included in an earlier version of ISTEA section 1111 violated the equal protection clause of our Constitution. This provision of our Constitution has been crucial to the ongoing struggle for civil rights in this country. It has been behind a number of important Supreme Court decisions dating back to the seminal Brown v. Board of Education.

The Adarand Court continued a long tradition of jurisprudence, establishing a colorblind Constitution, one which demands equal treatment under the law for members of all races. In acting, the Court has drawn a clear distinction between preference or quota programs and affirmative action efforts aimed at providing more opportunity for the less advantaged.

In my view, Mr. President, this is a crucial principle and distinction, one that will not allow the Government to give preference to one individual over another simply on account of status—absent direct evidence of past discrimination that the program is narrowly tailored to address—but does permit us to provide special assistance to those economically disadvantaged.

But our Constitution's principle of equality under the law must not be allowed to conflict in any way with outreach programs aimed at helping the economically disadvantaged of our society. Indeed, it points to public policies more in keeping with America's constitutional heritage, our commitment to fair play, and our desire to help the disadvantaged become full participants in our market economy and the prosperity it provides.

To that end, Mr. President, I believe that Senator MCCONNELL's amendment to the ISTEA legislation is potentially helpful. This amendment would strike section 1111 from the legislation on the basis that the changes between the language in this ISTEA and the version deemed unconstitutional by the District Court based on the Supreme Court's Adarand ruling are not sufficient to overcome the Court's constitutional objections. I wish to state that while I realize there is a difference of opinion on this issue, I agree with this constitutional analysis. The amendment would replace section 1111 with a requirement that every State in receipt of Federal highway dollars engage in ''emerging business enterprise development and outreach.'' Under the language, ''emerging enterprises'' are defined as contractors whose average annual gross receipts do not exceed $8.4 million over a period of 3 years. To be eligible, the businesses also must be small businesses that have been in existence for not more than 9 years.

Under this amendment, States would be called on to provide a number of services to emerging businesses, including periodic review of construction plans to ensure fairness and opportunity, as well as offering seminars, compiling and publishing lists of interested businesses and related companies, and providing networking opportunities on a regular basis.

The McConnell amendment offers significant outreach programs aimed at emerging businesses. By so doing, it aims Government assistance at those who need it most. In the process, it avoids rewarding well-to-do businesses simply on account of status, while providing assistance to minorities and women truly in a position to need and make use of it.

In addition, Mr. President, I thank Senator MCCONNELL for accepting my language in modifying his amendment. That language directs States to also aim efforts at business enterprises that are located in economically distressed communities and employ a majority of their workers from such economically distressed communities.

Finally, Mr. President, the McConnell amendment is constitutional. Because it does not base the awarding of Government contracts or benefits exclusively on the race of the recipients, it upholds the principles of our Constitution and the equal protection clause in particular. Support for this amendment is fully in keeping with our sworn duty to uphold the Constitution on which our Government is based.

However, Mr. President, in my view, the McConnell amendment does not go far enough. We must do more. I continue to believe, in other words, that

economic empowerment initiatives are crucial to the well-being of disadvantaged members of our society, and in the end, to our society as a whole.

It was in order to promote these efforts that I joined a number of my colleagues, including the Presiding Officer, in forming the Renewal Alliance, an alliance dedicated to renewing the families and communities which lie at the heart of our way of life and which are crucial for success in America.

To further these efforts, we have formulated legislation aimed at creating ''renewal communities.'' In these communities, targeted, pro-growth tax benefits, regulatory relief, brownfields cleanup, and homeownership opportunities will combine to produce jobs, hope, and a sense of community. By targeting distressed communities for Federal relief from onerous rules and taxes, we can assist the ongoing revival of our inner cities by spurring growth and productive rebuilding efforts.

In order to become a renewal community, a community must meet several criteria to qualify:

First, it must need the assistance. According to the legislation we have drafted, this means that the area must first be eligible for Federal assistance under section 119 of the Housing and Community Development Act of 1974. Second, it must have an unemployment rate of at least 1½ times the national rate. Third, it must have a poverty rate of at least 20 percent. And finally, at least 70 percent of the households in the area must have incomes below 80 percent of the median income of households in the metropolitan statistical area.

In addition, state and local governments must enter into a written contract with neighborhood organizations to do at least five of the following:

(a) reduce tax rates and fees within the ''renewal community;''

(b) increase the level of efficiency of local services within the renewal community;

(c) formulate and implement crime reduction strategies;

(d) undertake actions to reduce, remove, simplify, or streamline governmental requirements;

(e) involve private entities in providing social services;

(f) allow for state and local income tax benefits for fees paid or accrued for services performed by a non-governmental entity but which formerly had been performed by government; and

(g) allow the gift (or sale at below fair market value) of surplus realty in the renewal community to neighborhood organizations, community development corporations or private companies.

Third, the community must agree to suspend or otherwise not enforce the following types of restrictions on entry into business or occupations;

(a) licensing requirements for occupations that do not ordinarily require a professional degree;

(b) zoning restrictions on home-based businesses that do not create a public nuisance;

(c) permit requirements for street vendors that do not create a public nuisance;

(d) zoning or other restrictions that impede the formation of schools or child care centers; or

(e) franchises or other restrictions on competition for businesses providing public services including but not limited to taxicabs, jitneys, cable television and trash hauling.

State and local authorities may apply such regulations on businesses and occupations within the renewal communities as are necessary and well-tailored to protect public health, safety and order.

Now, in return for its reforms, Mr. President, the community will receive a number of renewal benefits.

First, a capital gains tax rate of zero for the sale of any qualified zone stock, business property or partnership interest held for at least five years.

Second, increased expending for purchases of plant and equipment in the community.

Third, a 20 percent wage credit for local businesses hiring qualified, low income workers who remain employed for at least 6 months.

Fourth, a provision allowing taxpayers to expense costs incurred in cleaning up contaminated sites within the zone.

Fifth, a provision allowing financial institutions to receive Community Reinvestment Act credit for investments in, or loans to, community groups within the zone. These groups would then provide loans and/or credit to local small businesses.

All of these provisions would encourage investment and job creation within the zone. In my view, this approach, as opposed to the existing preferences structure, or the McConnell approach standing alone, is the way to go.

Accordingly, Mr. President, while Senator MCCONNELL's amendment is, in my view, part of the answer to our challenge of providing all Americans the economic opportunity they deserve, it is not enough.

It can, and in my view should, be part of a larger program aimed at helping all Americans rebuild the community institutions which alone can provide the support and training people need to succeed in our competitive world marketplace.

Thus, if the motion to table the Amendment fails, I will attempt to augment it with a broader package of economic empowerment proposals as outlined above.

In addition, should the McConnell Amendment pass, I reserve the right to offer amendments making certain specific modifications to the language in this amendment.

That language would specify that state and federal outreach and dollars under USTEA shall be directed toward emerging business enterprises located in and/or employing the majority of their workers from ''targeted areas.'' A targeted area is defined as a community meeting the same criteria regarding poverty rates and so on necessary to be deemed an empowerment community. This will concentrate our effort where they are most needed and can provide the greatest benefit.

I appreciate the opportunity to speak on these issues today, and I look forward to hearing the rest of this debate. I also look forward to proceeding further in this area—whether in the context of this legislation or at a future point this year—because I think that the ideas which I have tried to outline, and which our Renewal Alliance has been working on, must be part of a broader approach and a broader set of solutions we are responsible for bringing to the American people.

Mr. MCCONNELL. If I could take a moment to thank the distinguished Senator from Michigan for his important contribution and the thought that he and the occupant of the chair have put into their proposal. I think is a very important contribution.

Mr. ABRAHAM. Thank you.

Mr. BAUCUS. I yield 10 minutes to the distinguished Senator from Virginia.

The PRESIDING OFFICER (Mr. COATS). The Senator from Virginia.

Mr. ROBB. Mr. President, I rise to support the Disadvantaged Business Enterprise Program and oppose the amendment of the Senator from Kentucky which would eliminate it.

This amendment, at least, implies that there is something wrong with supporting socially and economically disadvantaged businesses. I see nothing wrong with supporting socially and economically disadvantaged businesses. I believe it is entirely appropriate we do whatever we can, legally, to help small businesses flourish, businesses that might otherwise get swamped by larger, better financed competitors.

Mr. President, it is a sad fact that as we near the end of this century, socially and economically disadvantaged businesses tend to be minority owned. If we don't focus our attention on helping these businesses succeed, we are never going to achieve the dream of an economically colorblind society. The evidence of this, regrettably, is compelling and disturbing. White-owned construction firms receive 50 times as many loan dollars as African American-owned firms that have identical equity.

Where DBE programs at the State level have been eliminated, participation by qualified women and qualified minorities in government transportation contracts has plummeted. There is no way to know whether this discrimination is intentional or subconscious, but the effect is the same. This experience demonstrates the sad but inescapable truth that, when it comes to providing economic opportunities to women and minorities, passivity equals inequality.

If we don't exercise diligence, we are going to stifle businesses owned by

qualified women and minorities. It is that simple.

I do not support numerical quotas and I never have. I would never advocate awarding work to anyone who is, or any business that is unqualified for the task. But I do support lending a helping hand to individuals and businesses that, without special attention, might be overlooked, even though they are perfectly capable of performing the necessary work.

And that, Mr. President, I believe is the key to eliminating discrimination over the long-term. We cannot simply declare that a world where inequality exists is otherwise an equal world. We need to recognize that inequality and address it by making an affirmative effort to give qualified businesses a realistic chance to participate.

As Julian Bond remarked recently in a sentiment that I think is right on mark in this case:

> Affirmative action isn't a case of unqualified people getting a leg up, but of qualified people getting an opportunity.

Finally, I would like to commend the managers of the bill and, in particular, my colleague from Virginia for taking a courageous stand to support the DBE, despite the pressure that I am sure he is getting on this particular issue.

Mr. President, the managers are on the right side of this particular issue, and I urge my colleagues to support them by opposing this amendment.

With that, I yield the floor.

The PRESIDING OFFICER. Under the previous agreement, the Senator from New Mexico is recognized to speak for up to 45 minutes, if he so chooses.

Mr. DOMENICI. Mr. President, if somebody needs 5 minutes or so; I am awaiting a document that I need for my remarks.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield myself 5 minutes.

Mr. President, I want to ruminate about this concept of quotas and goals. First of all, nobody likes quotas. They are rigid, they are unforgiving, they are almost insulting. The DBE program does not use quotas; it uses goals.

Now, some say the goal is 10 percent, 15 percent, or 20 percent, or what not; so is it really a goal? To be honest with ourselves here, it is a goal, but it does have a number associated with it. For example, the number is 10 percent. Some States ask for a lower goal—not a quota, but a lower goal. Some States are granted those lower goals. Some States ask for higher goals and they are granted those higher goals. Some States say, ''Our goal is going to be 10 percent,'' and lo and behold, it turns out that the disadvantaged business enterprise program does not meet 10 percent, it is a lower percent. That has happened in a couple of States. In 1996, in Arizona and in Alaska, the goal was 10 percent, but those two States did not reach the 10 percent goal. In Alaska, it was 8.6 percent. In Arizona, it was 8.9 percent. You might ask: What happened? Why didn't those States meet their goals? As far as I know, nothing has happened, which is further evidence that this is not a quota; it is just a goal.

We all know that goals are important. We know that if we want to achieve something, it is good to have a goal. If you don't have goals, often we slip, we rationalize, and things fall between the cracks and they don't happen. Sometimes it is helpful to have numerical dates or to quantify your goals, again, to help assure that you reach them, like benchmarks. We all know that sometimes quantifying a goal helps make it happen. In this case, we are not talking about a rigid goal. It is a goal that has a lot of flexibility to it in a lot of different ways.

I was a bit bemused when I heard Senators chafing at this concept of goals, I guess the same way Senators resist unanimous consent agreements. A unanimous consent agreement is a kind of a goal. It is a statement that, within 2 hours we are going to vote or something, or within an hour and a half we are going to do something else. We have to have limits sometimes to make something happen. Look at newspapers. Newspaper reporters know they have a deadline to get the paper out.

So if we do want greater inclusion of minority groups participating in highway contracting, and if we want more women enterprises to participate in highway contracting, it is good to have a goal to help make that happen. That is what we are attempting to do here. It is not unconstitutional because it is very flexible. It has a lot of give. I might say that the proposed regulations that the Department of Transportation is working on and, in fact, will probably finalize in a couple of months, make the program even more narrowly tailored. For example, the regulations include further emphasis on good-faith efforts. All a contractor has to show is good faith, not a numerical number. Also in the proposed regulations is a broad waiver allowing States to come up with their own program that will replace the Department of Transportation's program if the State can show that its own program will effectively redress discrimination. That is a broad waiver.

In addition, the proposed regulations would add a net worth cap. That is, if your net worth exceeds a certain amount, you are not eligible, even if you are a woman or a minority. So all those statements about the Sultan of Brunei are irrelevant. The proposed regulations make it very clear that the Sultan of Brunei, with all his palaces and gold-plated Rolls Royces, and so forth, would not even begin to be eligible for the DBE Program. I might say that it is not only the Sultan of Brunei; it is a bunch of other folks whose net worth is significant and who should not be part of the DBE Program.

So the basic point is, again, that this is very narrowly tailored, it is flexible, it is based on good faith efforts. It is not a quota. And the proposed regulations will be even more flexible and narrowly tailored, with more emphasis on good-faith effort.

The PRESIDING OFFICER. Who yields time?

The Presiding Officer had earlier recognized the Senator from New Mexico to speak under a previous agreement, if he is prepared to do so.

Mr. DOMENICI. Mr. President, I yield 5 minutes of my time—although he may have a different view than I have—to Senator BROWNBACK.

The PRESIDING OFFICER. The Senator from Kansas is recognized to speak for 5 minutes.

Mr. BROWNBACK. I thank the Senator from New Mexico.

Although I think our views of the world are similar on many issues and actually quite a bit similar on this particular issue, we end up coming at it, in the end conclusion, a bit differently. I appreciate the Senator from New Mexico yielding me 5 minutes for this purpose.

Mr. President, the Senate will soon vote, of course, on an amendment proposed by the Senator from Kentucky on the ISTEA bill. As the bill stands, it mandates that ''not less than 10 percent'' of Federal highway and transit funds may be allocated to ''disadvantaged business enterprises.''

I want to speak specifically about this amendment that does away with racial set-asides and replaces it with an outreach program to emerging small businesses. I have really struggled with this vote. I find this a very difficult issue, not because I support quotas or because I believe racial set-asides will help bring about racial reconciliation, which is really my point of view and my difficulty with this because we desperately need racial reconciliation in this country. We need that to take place. We need that process to start in earnest, to move forward with the hearts and souls of people in this country. My problem is that I don't think quotas and set-asides alleviate the disadvantages many Americans face or to increase their ability to compete on a level playing field, nor do I really believe it is going to help us out with this racial reconciliation that our country so desperately needs.

Nevertheless, this has been a hard decision to make. It will be a hard vote to cast. I would like to explain why I will vote in favor of Senator MCCONNELL's amendment and why I have misgivings about doing so.

First, I believe that quotas are unconstitutional. Each of us, in serving in this body, has taken an oath to uphold the Constitution. The Supreme Court's ruling in Adarand is very clear. I took my oath of office to uphold the Constitution seriously. I could not, in good conscience, vote for a measure that I believe, and the Court has ruled, violates the highest law of this land.

Second, I do not think quotas are the answer to the problems that divide us and deny equal opportunity. Quotas do nothing to address the problems that we face as a country, of not having a colorblind society. Indeed, it actually perhaps makes us more aware of the differences, rather than less aware of the differences. It doesn't address some of the underlying problems such as the break-up of families, which is the single greatest predictor of opportunities and income later in life—coming from a solid family that cares and loves the children. Quotas do not help the millions of children who attend schools where violence is commonplace and drug use is rampant. They do not help children to read, write, do arithmetic, or have the basic skills in society that we are having so much trouble with.

Finally, I believe that set-asides are not only ineffective in bringing about racial reconciliation—this is my key point; I don't think they bring about racial reconciliation. Indeed, I think they have been counterproductive. The last several years have shown that quotas in some cases, indeed many, are an acid that further divides our Nation and corrodes the principles of equality. More than 30 years ago, Dr. Martin Luther King, Jr., shared his dream of a society where men and women would be judged ''on the content of their character, not the color of their skin.'' We all, as a country, saw those words as electric and true. This is a dream that almost all Americans continue to share—that we be judged on the content of our character, not on the color of our skin. Although we may disagree on the best means of getting there, I cannot believe that the best way to achieve a colorblind society is to call more attention to race, to count by race, and to divide by race.

That said, the reason I have struggled with this vote is I believe that it is incumbent upon us to open the doors of opportunity to all and reach out to those Americans who have been denied those opportunities. Unfortunately, the way this debate has been spun, a vote for quotas has been equated to show concern for the disadvantaged—a portrayal both false and destructive, I think. We need to do more to extend a helping hand to those in need and to open the doors of opportunity and not only level but expand the playing field for all Americans.

The Senator from Michigan has spoken and the Senator presiding, the Senator from Indiana, has spoken frequently about initiatives of the Renewal Alliance. I want to draw my colleagues' attention to these efforts. I think this is a serious effort at reaching out and truly showing that the way to racial reconciliation is to truly level the playing field and to expand the playing field in the areas where we are having the most opportunity. So the work in the inner cities and the work of the Renewal Alliance has been key in that.

I think this work of the Renewal Alliance is critical because, as I have struggled with this debate—and the reason I have struggled with this vote is not because I believe quotas are the answer, because they just are not, they are not constitutional—is that if we don't have a colorblind society, what do we go to if we don't think quotas are right or constitutional? Then what? I don't think we have answered that question yet in this body. How do we address the needs to create a colorblind society? That is where I think the Renewal Alliance is reaching out and doing that and saying, here are some ways we can truly develop in inner cities, and reach out and say: We care, we want these places, we want you to have opportunity and growth and hope. It is just that we aren't going to do it by acid tests that we have talked about in these quotas and that we can really reach Martin Luther King's vision of a colorblind society if we try to bid out and to reach out and to hold.

I ask my colleagues to look at the work of Senator COATS from Indiana and other people that have truly put their hearts into this and said, here is a way we can go, this is what we can do, this is not constitutional quotas. It is just not going to be. But this is what we can do, and let's do that, and let's reach out as Americans and bind arms together, of all creeds, of all kinds, of all races, of all religions, and make a bigger, better playing field in this country.

That is why, Mr. President, I will be voting for this amendment. It is a difficult vote. And I really hope and pray that we will revisit this issue along the lines of what has been put forward as a way of expanding the hope and opportunity.

With that, I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, if I could just have one moment to thank the Senator from Kansas for his important contribution to this debate, and thank him for his support.

The PRESIDING OFFICER. Under the Senate agreement, the Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, thank you, very much.

Mr. President, I rise today in opposition to the Amendment offered by the Senator from Kentucky, Mr. MCCONNELL. The Senator from Kentucky proposes to replace the Department of Transportation's Disadvantaged Business Enterprise (DBE) program with a new ''emerging business'' program. The amendment is intended to eliminate the DBE program and would have a devastating effect on the opportunities for DBE's to participate in federally funded highway and transit projects.

The proponents of this amendment urge Senators to vote for this amendment by saying that it is incumbent upon the Senate to bring ISTEA into compliance with the Supreme Court's ruling in Adarand versus Pena. They assert that just this summer, after the Supreme Court sent the case back to the District Court, that it found the DBE program was unconstitutional. Furthermore, they declare that the District Court in Colorado followed the Supreme Court's lead and found that the government, in fact, could not meet the Supreme Court's test.

The proponents go on to remind Senators that every member of Congress has publicly and solemnly sworn to support and defend the Constitution of the United States, and that we now have little choice but to comply with the unambiguous, unequivocal mandate of the courts and end the DBE program.

If Senators are considering voting in favor of the McConnell amendment on the basis that the program has been ruled unconstitutional, and that it is now incumbent upon us to bring the program into line with the Supreme Court's rule, then I would ask them to take the time to listen to a different view, and one that I believe is closer to the real facts.

The proponents of this amendment make the argument that we should stand for the rule of law and on this point we agree. However, many Senators will be interested to know that the District Court itself appears not to have followed the rule of law as outlined by the Supreme Court and therefore should not be mislead. I will say this again, because if you listen to the proponents of the amendment, and I have, you are compelled to consider their argument seriously. But if you look at the facts closely, you will find that the very constitutional rule of law the proponents ask us to uphold was itself not precisely followed by the District Court.

In 1995, in Adarand, the Supreme Court did not find the DBE program—or any other affirmative action program—unconstitutional. In fact, seven of nine Justices upheld the constitutionality of affirmative action and its continued need in certain circumstances. Instead, the Supreme Court established a new standard of review—''strict scrutiny''—for federal programs using race conscious measures. This new two pronged test requires that affirmative action programs are ''narrowly tailored'' to meet a ''compelling governmental interest.'' Without deciding whether the DBE program met this new strict scrutiny test, the Supreme Court sent the case back down to the District Court for consideration in lieu of its holding.

Mr. President, this is the rule of law the Supreme Court said must be followed, and it is the rule of law I would urge Senators to support. However, it is not the rule of law that the District Court followed on remand from the Supreme Court, and that is why the District Court's finding that the program is unconstitutional should be viewed with skepticism.

On remand, the District Court accepted Congress' determination that

there was a compelling need for the program. The District Court stated, ''I find on the record before me, Congress had sufficient evidence, at the time these measures were enacted, to determine reasonably and intelligently that discriminatory barriers existed in federal contracting . . . I conclude Congress has a strong basis in evidence for enacting the challenged statutes, which thus serve a compelling governmental interest.'' This meets the compelling governmental interest prong of the Supreme Court's ''strict scrutiny'' test.

The District Judge, however, decided that the program was not sufficiently narrow in its scope. In this part of his decision, the Judge took a position which directly contradicts the Supreme Court's rule in Adarand.

While seven of nine Justices of the Supreme Court said that there could be affirmative action programs that are both narrowly tailored and meet a compelling governmental interest, this District Court Judge found, and I quote, ''Contrary to the Court's pronouncement that strict scrutiny in not 'fatal in fact,' I find it difficult to envisage a race-based classification that is narrowly tailored.''

Obviously, Mr. President, the key words in the District Court's ruling are ''Contrary to the Court's (meaning Supreme Court's) pronouncement. . .'' I agree with the proponents of this amendment that every member of Congress took an oath to support and defend the Constitution of the United States, and we should be vigilant in adhering to that oath. But, the fact of the matter is that the District Court itself does not view the constitutional rule the Supreme Court set in Adarand as being able to be followed because it found that it would be difficult to envisage any affirmative action program that could be narrowly tailored. The Supreme Court said that it could envision a program that was both narrowly tailored and furthered a compelling governmental interest, and herein lies the flaw in the argument of the proponents of the amendment. On this point, Justice O'Connor, writing for the majority stated, ''We wish to dispel the notion that strict scrutiny is strict in theory, but fatal in fact. The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from action in response to it.''

The very District Court ruling that the proponents ask us to rely on is currently being appealed by the Department of Transportation and the Department of Justice in the 10th Circuit Court of Appeals. The case has been fully briefed, but no date has been set for oral argument. So while the proponents suggest that a decision on this matter has been fully resolved by the courts and constitutes a mandate that we should follow, the fact is that it is still an open question.

Furthermore, Mr. President, although the District Court found that the scope of the program was not narrowly tailored, it did not take into account the changes that the Department of Transportation has proposed to the program to respond to the Supreme Court's narrow tailoring guidelines. The Department of Transportation has issued a proposed rule to improve the DBE program and respond to the Adarand decision. The proposed rule is specifically designed to meet the narrow tailoring requirement of the Supreme Court's strict scrutiny test.

Specific narrow tailoring proposals include: Ensuring that specific goals are set to correspond to the availability of qualified DBEs in a given market. The new goal-setting methods will ensure that DBEs receive the same opportunities they would have but for the presence of discrimination—no more, no less. Giving priority to race neutral measures, such as outreach and technical assistance, in meeting overall goals. Recipients would look to these approaches before using race-conscious measures, such as contract goals. Emphasizing the need for recipients to take good faith efforts to meet contracting goals seriously. Recipients must award a contract to a bidder who documents adequate good faith efforts, even if the bidder does not fully meet a contract goal. Providing waivers that will afford recipients increased flexibility in implementing the program.

So while the District Court found it difficult to envisage an affirmative action program that could be narrowly tailored, it did not even have before it the proposed rule that purports to meet that test. These regulations are to be finalized within the next month. After thorough review, both the Department of Transportation, and the Department of Justice have determined the DBE program is constitutional.

The proponents have urged us to comply with the ''unequivocal mandate'' of the courts and end the DBE program. The only ''unequivocal mandate'' the courts have stated is that race-based programs must meet the strict scrutiny test. Contrary to the Supreme Court's decision that an affirmative action program could be both narrowly tailored and meet a compelling governmental interest, the District Court found it ''difficult to envisage'' any narrowly tailored program, and moreover, it did not have before it the very rule proposed to address the aspect of the Supreme Court's strict scrutiny test.

President Eisenhower, when he was still general, used to say that he ''. . . never liked to make decisions too quickly . . .'' I would urge my colleagues to heed the advice of President Eisenhower, and not make a decision to quickly on this matter prior to a determination being made of whether the proposed rule can meet the narrow tailoring aspect of the Supreme Court's test.

The Senator from Kentucky's amendment requires states to take action to enable emerging businesses to compete for highway and transit contracts and subcontracts. These actions include outreach to emerging small businesses in the construction industry, technical services and assistance with bonding and lending, and technical services and assistance with general business management. The amendment prohibits discrimination and preferential treatment based, in whole or in part, on race, national origin, or gender.

Mr. President, the proponents of this amendment have lead members to believe that the DBE program is really a ''quota program''. I want to stress at the outset that this program is not a ''quota program'' as some have suggested. There is a great difference between an aspirational goal and a rigid numerical requirement. Quotas utilize rigid numerical requirements as a means of implementing a program. The DBE program utilizes aspirational goals.

Under the DBE program, state and local government recipients of Department of Transportation funds administer the DBE program. Each year, they determine how much DBE participation is reasonable to expect based on the availability of DBEs and the types of work involved. The recipient's annual goal may be more or less than the national 10% goal established by Congress, and it is worth noting that if they do not meet that goal there are no penalties. In fact, the Department of Transportation has never penalized or sanctioned a state or local recipient for not achieving their goals. This provides flexibility to meet local conditions. Contract goals are not operated as quotas because they only require that the prime contractor make ''good faith efforts'' to find DBEs. If a prime contractor cannot find qualified and competitive DBEs, the goal can be waived.

In as much as the DBE program is not a quota program, neither does it constitute reverse discrimination as the proponents have suggested. The DBE program works to remedy discrimination, not cause it. In fact, nonminority business people who are disadvantaged have applied and been accepted into the DBE program. In fact, any white male, as long as he can demonstrate social and economic disadvantage, can be admitted to the program.

Let's remember, the Department of Transportation reports that 85% of the contracting receipts under ISTEA programs go to non-DBEs with the current DBE program in place. This figure indicates that minority firms do not dominate the construction industry. The role in the construction industry will only be diminished by the elimination of the DBE program.

The DBE program works to ensure a level playing field for qualified DBEs which have for years confronted discrimination and been blocked out of contracting opportunities. That discrimination is evidenced by District Court's finding that the program meets the compelling governmental interest

prong of the Supreme Court's strict scruity test.

THE NEED FOR A DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

There is discrimination in the construction industry. Minorities make up 20 percent of the U.S. population, but minority-owned businesses are only 9 percent of construction firms and they get only five percent of the construction business. Women own a third of all small businesses but received less than three percent of federal procurement contract dollars in 1994.

Lenders discriminate against minority firms. It is a lot harder to capitalize a minority construction company. Black construction firms can raise fifty times fewer dollars per dollars of equity capital than White firms. When there is no affirmative action program, DBEs don't get any work.

In Michigan within six months of ending the state DBE program minority-owned businesses were completely shut out of state highway construction. During the same period, in the same state, under the Federal-aid highway DBE program the same DBEs received 554 subcontracts worth 12.7 percent of the federal aid dollars. When there is no affirmative action program white-owned prime contractors reject minority or women-owned firms even when they offer the lowest bid.

The DBE program follows the Supreme Court's Requirements. The current DBE program sets a national participation goal of 10 percent for disadvantaged business enterprises.

The goals are flexible. DOT can, and has permitted, a lower goal based on availability of DBE firms and opportunities for subcontractors.

The goals are sometimes waived completely if a prime contractor, despite good-faith efforts cannot find a qualified disadvantaged business to meet a specific contract. The proposes regulations respond to the ''narrow tailoring standards'' set out by the Supreme Court.

Courts have said: specific goals should correspond to the availability of qualified DBEs in a given market. Provide the same opportunity to DBEs that they would have received but for the presence of discrimination—no more no less.

Courts have emphasized the importance of ''race neutral'' measures such as outreach, training, and technical assistance.

Race-neutral measures would be used to achieve as much DBE participation as possible before any ''race-conscious'' measures are used. Only use ''race-conscious measures to extent, and only for as long as, they are needed to achieve a level playing field. Goals are not quotas. Prohibits set-asides except in most severe cases of discrimination.

Mr. President, for those who are managing the bill, or might be waiting to speak this evening, I don't believe I will use all of my time. If I am not holding anybody up, I might reserve some of it until tomorrow, or whenever we finish it.

How much time is allocated to the Senator from New Mexico?

The PRESIDING OFFICER. The Senator from New Mexico has 36 minutes remaining.

Mr. DOMENICI. Mr. President, needless to say, the Senator from New Mexico who comes from a State that has about 11 percent American Indians as part of our population mix and about 38 percent Hispanics—needless to say, I have lived my adult life in an atmosphere where I have rubbed shoulders with those members of the minority—American Indians and Hispanics—in my State as they spoke of opportunity and as they spoke of a chance to own a business and of their hope that their children would get a good education so they could have a chance like all of us had in New Mexico who are not Hispanics or Indians.

I have seen a great number of successes in terms of business by the minority community in New Mexico. Much less by the Indians proportionately—American Indians—than by the Hispanics. And that has a lot of cultural nuances to it also, and tribal nuances and the like.

But I have strived most of my life to try to be part of the kind of community and the kind of lawmaking that gave the minorities an equal chance to own businesses. That is essentially what we are talking about here. And we are engaged in a debate—I don't think a debate about whether everyone, including minorities, ought to have a chance to own businesses in America. I would assume if we put that question to everyone, they would all say of course. But the question is, even though we all say of course, do they really have an equal opportunity? Is it as easy for an intelligent, well-educated Hispanic American, New Mexican, or a Native American to get into business? I will say that without any of the Government involved, they are getting more and more opportunities. And there is no question that more Hispanics are in business in the United States on their own without the benefit of the Federal Government programs than those who are in business because of the Federal programs.

But I can also assure you that the Hispanic Americans who live in my State and in other States are genuinely listening today to this debate. And if they aren't tuned in on C-SPAN, they will soon be hearing what people tell them we are doing here on the floor of the Senate. I guarantee you, Mr. President, and my good friend, exceptionally good friend from Kentucky, who happens to be on the opposite side of this issue today, on the precise formulation of the issue—I guarantee you that whether Hispanics and Native Americans, or other minorities, or women who are part of this program and are scurrying around to catch up with the men in business ownership—incidentally, as an aside, the fastest growing portion of the American business ownership portfolio is now women.

As a matter of fact, as of 2 years ago, women-owned businesses in America, believe it or not, and all by themselves, employed more people than the Fortune 500 in America. And it was the fastest growing piece of those who were entrepreneurs. On the other hand, that doesn't mean that they don't need some help sometime to break into the private sector.

So I have come to the floor concerned because I do not want to be part of an America that is saying, because we don't want quotas and we don't want set-asides, which I will agree we should not have—we are not going to have a major program within the highway programs of this country, which we are currently thinking is $173 billion worth of business, more or less, over the next 6 years, and add to it $41 billion more or less for mass transit. I do not want to leave the floor with that bill and with people being able to say there may not be any minority participation in the businesses that put this fantastic roadway and mass transit system together. That may be a bit of an exaggeration. But essentially what we have done in the past is to try to make sure that there was participation. And we have broadened that to women as part of a group of Americans that are disadvantaged when it comes to owning their own businesses.

So I have for the last 3 days—not for months—studied this issue. And I must say I didn't have hours upon hours to do it; I have a lot of other things I have to do around here. But I have come to the conclusion that we do not have to wipe out the Disadvantaged Business Enterprise Program in this bill in order to accomplish our goal, which I think is rather unanimous, that there be no quotas yet there be some positive direction so that women and minorities will get a reasonable portion of the business under this very, very large multimillion-dollar contract authority that is going out to American business, large and small, to fulfill.

The more I read, and the more I said, ''But you can't be right, Senator DOMENICI, because of your wonderful friend from Kentucky whose thoroughness and constitutional acumen on the bill called campaign finance''—I read the same cases with him, and I agreed with him. In fact, I told him that I had come full circle and could clearly understand in campaign finance how it was a freedom of speech issue. He recalls that. I would not have gotten to that point. I was still fuzzy about it until I heard his interpretations of the Supreme Court.

But I tell you that I do not agree that this minority business program that we have in this ISTEA bill before us is a program that mandates quotas and mandates set-asides. In fact, I don't believe it is even fair to just look at the face of the statute, as has been done here on the floor, and read it, and say it is patently a quota system because, Mr. President, it is not implemented without regulations. And the

regulations and the way the program is being implemented, from everything I can find out, do not establish quotas or set-asides.

Then I said, ''Well, my friend from Kentucky, whom I have just expressed my admiration for, keeps saying the Supreme Court has already ruled it unconstitutional.'' And I said, ''If that is really true, he should get 100 votes.''

So I started asking. I have some lawyers on my staff. I don't think necessarily I have Laurence Tribe on my staff. I could have sent it up to Harvard for them to look at it. Maybe my friend from Kentucky would say that wouldn't be a very good place to send it; I don't know. But maybe over to Stanford. Well, let's settle for old Michigan, the University of Michigan.

But in any event, the truth of the matter is that I have now received very, very different information that I think makes sense about whether this Disadvantaged Business Enterprise Program as currently being administered has been declared unconstitutional by the Supreme Court. As a matter of fact, let me say I am convinced that it has not.

What I have done—and I hope the Senate will find this interesting—is I have asked the Attorney General's Office of the United States and the Secretary of Transportation to answer some very precise questions. I have them answered. They are so interesting and so precise. Maybe that is because I asked the questions that I wanted answered. I would like to read them. There are only six. When I am finished later this evening, I will pass out the letter to whoever wants it. It will be then signed by the Attorney General of the United States and by Secretary Slater.

Let me read the letter. The letter is dated March 5, 1998, directed to me.

It says:

DEAR SENATOR DOMENICI: This letter responds to questions that you have posed regarding the Disadvantaged Business Enterprise (DBE) Program currently authorized by the Intermodal Surface Transportation and Efficiency Act.

1. Has the text of section 1111 been ruled on by the Supreme Court, and if not, how does section 1111 differ from the statute that was before the Supreme Court in *Adarand v. Pena*?

The Supreme Court in *Adarand v. Pena* did not find this or any other program to be unconstitutional. Indeed, the Supreme Court did not even consider the constitutionality of section 1003(b) of ISTEA, which sets a 10% goal for expenditure of the authorized funds with DBEs. The *Adarand* case involved a different program: the Department of Transportation's use in its own direct federal contracts of compensation to encourage federal prime contractors to use DBE subcontractors. The compensation was provided through a specific contract provision used only in DOT's own direct contracts for highways on federal lands. Even as to this compensation program, the Supreme Court's opinion merely establishes that federal race-conscious programs, like state and local programs, are subject to strict scrutiny. The Court made clear, however, that such scrutiny is not ''fatal in fact,'' and that the federal government has a compelling interest in remedying the lingering effects of discrimination through properly tailored programs.

2. How do you conclude that Section 1111 of the ISTEA bill was not before the Supreme Court in *Adarand v. Pena* and has not been declared unconstitutional?

The Supreme Court's opinion in *Adarand* addresses only the DOT's subcontracting compensation program, not the ISTEA DBE program. The Supreme Court's remand in *Adarand* makes this clear—it states that the courts below were to determine only ''whether any of the ways in which the Government uses subcontractor compensation clauses can survive strict scrutiny.'' 515 U.S. at 238. Only one district court judge—the judge who is considering the remand in *Adarand*—has found the compensation clause program unconstitutional. While that district court judge also ruled the ISTEA program unconstitutionality of ISTEA was not properly before the court. The Justice Department has argued on appeal to the Tenth Circuit that the district court improperly addressed the constitutionality of ISTEA and, in any event, erroneously concluded that ISTEA was unconstitutional.

3. Section 1111 of the ISTEA bill states, ''not less than 10 percent of the amounts made available under this program shall be expended with small business concerns controlled by socially and economically disadvantaged individuals.'' In view of this language, why is the DBE program not a mandatory set aside or rigid quota program?

The 10 percent figure contained in the statute is not a mandatory set aside or rigid quota. First, the statute explicitly provides that the Secretary of Transportation may waive this goal for any reason—specifically, the language quoted above is preceded by the phrase ''[e]xcept to the extent that the Secretary determines otherwise.'' Second, in no way is the 10 percent figure imposed on any state or locality. Under the program, it is the states that really set goals for contracting. They may set goals higher or lower than 10 percent depending upon the local availability of DBEs, projected contracting needs and past results of their efforts. Moreover, state agencies are permitted to waive goals when achievement on a particular contract or even for a specific year is not possible.

The DBE program does not set aside a certain percentage of contracts or dollars for a specific set of contractors. Nor does the program require recipients to use set asides. The DBE program is a goals program which encourages participation without imposing rigid requirements of any type. Neither the Department's current or proposed regulations permit the use of quotas. The DBE program does not use any rigid numerical requirements that would mandate a fixed number of dollars or contracts for DBEs.

4. The comments to the new rule states, ''[i]f race-neutral means are the first resort under this proposed section, then set asides and other more intrusive means, such as a conclusive presumption, are the last resort.'' In view of this language, why is this not a mandatory set aside or rigid quota program?

The comment is intended to make clear that race- and gender-neutral mechanisms (e.g., outreach, technical assistance) are the means of first resort for recipients to use in seeking to meet overall goals. In fact, the rule itself prohibits setting aside particular contracts unless the state has been unable to meet its goals for a number of years *and* there is a court-order or state law which directs the recipient to use set asides. Such set asides would not be permitted, even where state law authorizes their use, unless it can be shown that less restrictive measures, including race neutral programs and flexible contract goals, were insufficient to address the demonstrated effects of discrimination. As discussed above, the DBE program thus neither mandates set asides nor permits the use of rigid quotas.

5. Are there sanctions, penalties or fines that may be imposed on any recipient who does not meet DBE program goals? In the fifteen years that this program has been in operation, has any state been sanctioned for not meeting its program goals? In answering please provide specific examples to support your conclusion.

No state has ever been sanctioned by DOT for not meeting its goals. Nothing in the statute or the regulations imposes sanctions on any state recipient that has attempted in good faith, but failed, to meet its self-imposed goals. In 1995, two states failed to meet their goals; in 1996, two other states failed to meet their goals; and, in 1997, three states failed to meet their goals. There were no sanctions, penalties or fines of any kind imposed against any of those states.

6. Is this program only for minorities and women?

No. Any individual owning a business may demonstrate that he is socially and economically disadvantaged, even if that individual is not a woman or minority. Both the current and proposed regulations provide detailed guidance to recipients to assist them in making individualized determinations of disadvantaged status. And, in fact, businesses owned by white males have qualified for DBE status.

7. What recourse is available to low bidders who have made good faith efforts to meet DBE contract goals, but despite those efforts were not able to do so? Is it true that low bidders who have tried but failed to meet the contract's DBE goal are automatically eliminated from consideration for the contract?

Under the current regulations, if a prime contractor is unable to find available and qualified DBEs to meet a specific contract goal, the goal may be waived. Under the proposed rule, the goal must be waived. No low bidder who tried in good faith but failed to meet the goal is automatically eliminated from receiving the contract.

Thank you for your interest in, and support of, this important program.

Sincerely,

JANET RENO.
RODNEY E. SLATER.

That is the extent of the letter which I have now read into the RECORD. Mr. President, let me say that, obviously, reasonably oriented Senators, who have good motives, maybe even the same motives and same goals, can disagree. But I take very seriously whether I should come down and vote for a statute that is patently unconstitutional, and I am very confident that, when I vote against the amendment of the distinguished Senator from Kentucky to strike that provision and substitute for it, that I am, when I vote against it, voting to leave in this bill and the regulations accompanying it, a constitutional provision with reference to helping the disadvantaged, including women and any business that might qualify that is economically disadvantaged.

I hope, and I say to the administration very clearly right now: You have now put the signature of the Attorney General of the United States and the Secretary of the Treasury on the answer to these seven questions. And this Senator, and I think a number of other Senators, is going to be voting to keep

the provision in the bill based upon these kinds of assurances. Let me make sure that the President of the United States understands that if it turns out that, as they produce the completed regulations for the program, as they attempt it across the board for all programs—they are in the process of doing that; there are many other departments other than the Department of Transportation that need refined regulations. If, in fact it comes out in a few months that the regulations are not being interpreted in the way suggested here, then I assure you that we will change them. I am not suggesting we will do away with help and assistance in the area that is encompassed here, but many are voting because they have confidence that the rules, as they implement this, will not be inconsistent with these statements. This better become a very, very serious challenge to the administration as they finally implement this program.

If they do that, and they are done as suggested in these responses, then I have no doubt that anybody attempting to appeal will lose. I have no doubt that the issue will not be before us again, because it will not have any set-asides to it, it will not have any fixed ratios, the kinds of things that we all know we don't want—quotas, numerical quotas and the like.

With that, I reserve the remainder of my time. But I would say to the leadership, if the rest of the time is running out and we are ready to vote at any time in the near future, I believe a call to me will get me to relinquish the remainder of my time. But for now I will reserve it.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator form Kentucky.

Mr. MCCONNELL. I can say to my good friend from New Mexico, for whom I have the greatest respect, I would like to just mention what the Supreme Court said in the Adarand case. Basically what the Supreme Court did was to lay out the standard, and they said that any racial presumption must be narrowly tailored to meet a compelling governmental interest. ISTEA uses that racial presumption. Then what the Court did was they sent the case back to the district court to determine what statutes and regulations were in play in Adarand and whether the statutes and regulations met the strict-scrutiny standard.

In the district court case—I apologize to my good friend from New Mexico if I said the Adarand case declared the regs unconstitutional. I don't think I said that on the floor here today. I may have said that in some conversation we had yesterday. But what the Adarand case did was lay out the standard, sent the case back to the district court, and the district court said, and this is a direct quote, ''Section 1003(b) of ISTEA and the regulations promulgated thereunder are unconstitutional.'' So the district court, applying the standard of Adarand, said the case was unconstitutional.

The Department of Transportation, in trying to appeal the district court decision—they don't like that decision. They are going to appeal it to the 10th circuit. The Department of Transportation in their brief, in describing the lower court decision, says, ''This order declares unconstitutional the program operated by DOT, but also the Federal aid DBE program operated by the State of Colorado under ISTEA.''

So, I think we are in the same place here. Technically, the Supreme Court only laid down the standard in this case. But that was a landmark standard. It was sent back down to the district court, which applied the standard and found this unconstitutional. And the Court in another case, a very similar case to this—the Court meaning the Supreme Court—has addressed this issue. So it is not like the Supreme Court has never spoken, I would say to my friend from New Mexico, on this subject. In the Croson case the Court said, ''In sum, none of the evidence presented by the city''—this was referring to the city of Richmond, a similar factual situation:

> None of the evidence presented by the city point to any identified discrimination in the Richmond construction industry. We therefore hold that the city has failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race.
>
> To accept Richmond's claim that past societal discrimination alone can serve as the basis for rigid racial preferences would be to open the door to competing claims for remedial relief for nearly every disadvantaged group. The dream of a nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs. Courts would be asked to evaluate the extent of the prejudice and consequent harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classifications. We think such a result would be contrary to both the letter and spirit of a constitutional provision whose central command is equality.

Finally, let me say the Supreme Court has addressed a similar issue in the Croson case. The Supreme Court laid down the standard in Adarand, sent it to the district court, which applied the standard which found the very provision we are talking about unconstitutional. That is on appeal to the 10th circuit. And the sufficiency of the new regs that my good friend from New Mexico and other speakers on the other side of this issue have referred to I suppose is the issue before us today. In other words, has the Department of Transportation, bearing in mind the Adarand decision and the subsequent district court decision, adjusted the regulations in such a way as to come into compliance with the law?

I cite on that point a letter from George LaNoue, who is an expert in this particular field who has testified before a number of congressional committees on this subject. Professor LaNoue addresses the adequacy of the new regs. He says:

> It is being asserted that various alterations and proposed regulations for ISTEA solve the constitutional problems created by the use of race, ethnic and gender preferences in awarding of contracts under that program. That assertion is incorrect for two reasons. First, the regulatory alternatives go only to the issue of narrow tailoring—
>
> Narrow tailoring—
>
> not to the constitutional requirement that a compelling basis of remedying identified discrimination be established before any, for the use of preferences, be considered. None of the fundamental evidentiary requirements necessary to support the preferences in this legislation have been established by the administration or by Congress.

He concludes his letter, which I will ask to have printed in the RECORD:

> Proposed regulations are either irrelevant or incomplete to the major requirements of narrowly tailoring, and they do not begin to supply a compelling basis for the use of preferences.

So where I think we are is that reasonable people can differ about what the courts are saying. I think it is pretty clear that the Senator from New Mexico probably speaks for the majority here in the Senate, and we will get an opportunity, as he indicated, to find out what the law is because it is on appeal to the 10th circuit.

It is also very, very clear that quotas and preferences are going to die hard, Mr. President, in this country. There are roughly 160 preferential quota and preference programs in the Federal Government which dole out benefits on the basis of gender and race. It looks as if the only way we will be able to dismantle those is case by case by case.

The Senator from New Mexico is certainly correct, the district court decision applying the standard in Adarand is on appeal to the 10th circuit. But there are numerous Supreme Court and circuit court decisions that give us an indication of what the result will be. It will probably be a denial of cert, which someone will argue, again, is not a Supreme Court decision. But a denial of cert, if the 10th circuit upholds the district court, will, in fact, finish the case.

I am not saying the Senator from New Mexico will take this position at all, but I bet you there will be some, I say to my good friend from New Mexico, who, if we offer this amendment at some later time, will say, ''Well, there wasn't a Supreme Court decision on it, it was only a denial of certiorari.

So I thank the Senator from New Mexico. I understand the sensitivity of this issue. I certainly agree with him that he could rely on the Attorney General's opinion about this, if he chose to. She is a part of the administration. The administration opposes dismantling this particular program. Just speaking for myself, I am not surprised that she would take the position she does, and ultimately the courts will decide.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I yield myself up to 5 minutes.

Let me say to my friend from Kentucky, actually, I am very pleased with the remarks he has made, because essentially there is no question that the amendment which he offers, as I view it, is premature if the purpose is to make this bill eliminate any program that has been ruled by the Supreme Court to be unconstitutional, because obviously, whatever the district court did with it—and it has not been rendered unconstitutional prior to this district court decree—whatever they did to it is on appeal. As a consequence, we don't even know if the appellate court agrees that it is unconstitutional as determined by the district judge who, incidentally, did not even have ISTEA before the court when this decision was rendered.

Let's just make one other observation about the administration. And I hope Democrats will join me with this. I have just said they better be right. They just told us what it does and doesn't do and how they are going to make sure it is tailored that way. But I think it is fair to say to the President that some of us remember when the decisions came down from the Supreme Court about set-asides and the 8(a) program and others that, as the President said—and I can't quote him verbatim nor do I remember the time, but I can assure you it was sometime back—''I will have my administration go through all these laws and correct them so that they meet what the Supreme Court's test is.'' Frankly, there are a lot of people who have been waiting for them to get that done.

Mr. MCCONNELL. I ask my friend, did they find any they thought were inappropriate?

Mr. DOMENICI. As a matter of fact, I understand from conversations this morning, the conversations that preceded this letter, that they are in the process of rewriting rules and regulations for all of them, not just ISTEA, and I said, ''You better hurry up.''

We all know that they have to be rewritten. The minority community knows they have to be rewritten. This debate may have been avoidable. Had they written these both generic and specific rules, we might not have had this argument.

The answer I received, so the Senator will know, is that it is very difficult when you look at the whole array of programs. The Senator says there may be more than 160?

Mr. MCCONNELL. Close to. Between 150 and 160.

Mr. DOMENICI. It is very difficult for the lawyers and those who put them together to get it all finished. I think this debate and this letter will push them to get it done, and get it done as quickly as possible.

I yield the floor, and I thank the Senator.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, with regard to the likelihood of the district court decision in Adarand being overturned—I see my friend from New Mexico is leaving—just to close the discussion on what is likely to be the outcome in the case, I asked the Congressional Research Service about the cases in this particular area of the law.

Let me, Mr. President, for our colleagues in the Senate, point out that the Congressional Research Service has found no—no, not a one—no court ruling after a trial where a race-based contracting program has met the Supreme Court's test of strict scrutiny.

I say to my friend from New Mexico, there hasn't been a single case that the Congressional Research Service could find where a race-based contracting program has met the Supreme Court's test of strict scrutiny. In fact, CRS has explained that Adarand conforms—this is not sort of an aberration out there—it conforms to a pattern of Federal rulings across the country striking down race-based contracting programs as unconstitutional:

Associated General Contractors of California v. San Francisco, a ninth circuit case; Michigan Road Builders v. Milliken, a sixth circuit case; Groves v. Fulton County in the Northern District of Georgia; Milwaukee County Pavers Association v. Fiedler in the seventh circuit; Associated General Contractors of Connecticut v. New Haven, district court in Connecticut; O'Donnell Construction Co. v. District of Columbia in DC Circuit; Arrow Office Supply v. Detroit, Eastern District of Michigan; Louisiana Associated General Contractors v. Louisiana in Louisiana; Associated General Contractors of America v. Columbus, Southern District of Ohio; Engineering Contractors Association of South Florida v. Metropolitan Dade County in the 11th circuit; and finally, Contractors Association of Eastern Pennsylvania v. Philadelphia in the third circuit; and more recently, Monterey Mechanical v. Wilson in the ninth circuit, decided last September; Houston Contractors Association v. Metropolitan Transit, decided last November.

Mr. President, CRS was unable to find a single court ruling where after a trial a race-based contracting program has met the Supreme Court's test of strict scrutiny.

I think it is extremely unlikely, in conclusion, I say to my friend from New Mexico, that we are going to have a court decision overturning the district court finding after Adarand laid down the standard. I thank him for his important contribution.

This is a very, very important issue about what kind of a country we are going to have, what kind of America we are going to have. Are we going to realize Martin Luther King's dream of a colorblind society, or are we going to continue down what the Senator from Kentucky believes is a mistaken path of putting people into boxes, into groups, and to doling out benefits and rights based upon what ethnicity they may be, whether they are male or female? Are we going to continue to go down that path or really work to achieve a colorblind society? I think the courts are telling us that quotas and preferences based on race, ethnicity, and sex are not going to be upheld. The pattern is clear, and it seems to me we ought to follow what is, it seems to me, the law of the land in this particular instance. I yield the floor.

Several Senator addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I note Senator KENNEDY is on the floor. He has been over here many times seeking to speak. I yield to the Senator 15 minutes.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I welcome this opportunity to continue the debate on the steps needed to achieve the goal of equal opportunity for women and minorities. Clearly, we have made substantial progress toward the goal of equal justice under law, but just as clearly, we still have a long way to go.

From President Kennedy to President Nixon to President Clinton, there has always been bipartisan recognition in the White House and Congress that the playing field is not level for women and minorities and widespread acceptance of the need to take steps to remedy the effects of persistent discrimination.

Civil rights is still the unfinished business of America. We have made significant progress toward justice for all and opportunity for all. But, as the church arson epidemic, the Texaco and Mitsubishi scandals, the Good Ol' Boys Round Up, and the brutalizing of a Haitian immigrant by police officers in New York City demonstrate, we are not there yet.

Incredibly, there are some who believe that discrimination is a thing of the past, and that the playing field is now level for women, for minorities, and for other victims of discrimination. They are wrong. Job discrimination is still a persistent problem for minorities in all aspects of the economy. The glass ceiling still prevents large numbers of women from attaining important job opportunities.

Nowhere is the deck stacked more heavily against women and minorities than in the construction industry. African American contractors still report arriving at job sites to find signs with racial epithets. One African American contractor was told to leave a home site by a white customer who said, ''You didn't tell me you were black and you don't sound black.'' In California, a female contractor was told that the reason her asbestos-removal business had declined, even though her work was good, was because ''it's back to the good ol' boys club. Haven't you heard affirmative action is out?''

There is no doubt that if we terminate meaningful programs, like the

Disadvantaged Business Program in ISTEA, the clock will be turned back—back to bigotry, back to closed-door deals, back to denial of opportunity. The door that America is steadily opening to women and minorities will be shut once again.

Proof comes from communities across the Nation. If we terminate a State disadvantaged business program, public contracts awarded to businesses owned by women and minorities decline rapidly.

In Philadelphia, contracts awarded to women and minorities dropped 97 percent—97 percent—in the first month after the city terminated its disadvantaged business ordinance.

In Tampa, contracts awarded to black-owned firms dropped 99 percent—when that city ended its goals program.

In Michigan, minority firms were eliminated as contractors on State highway projects within 6 months after the suspension of the State's disadvantaged business program in 1989. Within 9 months, participation by women-owned businesses had dropped to 1 percent of total awards.

Can it be that no qualified minority contractor was available for a highway construction contract in Michigan after the State program ended? It defies reason to believe that is true.

The Disadvantaged Business Enterprise Program and others like it have brought new faces to the table. Many women and minorities have had the opportunity to participate—to show they can excel. An electronics company in Orlando—a steel assembly firm in Illinois—a crane and crane operator supplier in Chicago—all owned by women. This program gave them the opportunity to prove themselves. But if these programs end, they are deeply concerned that the major contractors that called them and the companies that praised their work will disappear—not because they do bad work, or charge more than their competitors, but because they are women.

Dorinda Pounds, currently president of Midwest Contractors, Inc., an Iowa highway construction business, had trouble getting startup capital. After 9 years in the construction business, she had decided to start her own business and was faced with the task of raising $500,000 for equipment and expenses. She turned to banks and investors, but they initially expressed concern that the male contractors would lock her out and the banks would not recoup their investment. The DBE program certification was indispensable in persuading bankers and investors to take a chance on her new company.

Three years later, prime contractors ask for her—not because she is a DBE, but because she can get the job done.

Jennylynne Gragg, president of G and G Signals and Lighting, is another example. After 6 years in her parents' construction business, she became the company's general manager, and was able to increase profitability immediately. Her father, acting on his belief that the construction industry is ''no place for a woman,'' offered her job to a younger brother with no experience, and Jennylynne decided to prove him wrong.

Eight years later, she operates a successful contracting business of her own. But it has not been easy. She and her mother—now a business partner—have to struggle to obtain financing. General contractors often solicit their bids with no intention of hiring them. Even when they are the low bidder, general contractors have often used another firm and accepted a higher bid.

Why would a general contractor accept a higher bid? It doesn't make sense—unless you remember that the traditional business network doesn't include women or minorities. At a Judiciary Committee hearing on this issue, Janet Shutt, who operates an Indiana construction company, said some general contractors would rather lose money than deal with female contractors.

The Department of Transportation DBE program is changing all that. The program was signed into law by President Reagan in 1983 to assist minority-owned firms.

It was expanded in 1987 to include women. President Reagan and Congress recognized that it was time to end the pervasive discrimination in the highway construction industry, that positive steps were needed to eliminate years of bias against women and minorities.

Under the DBE program, the Department of Transportation sets a national goal—10 percent of Federal contracting dollars—for participation by women and minorities. States then set their goals—not quotas or set-asides—based on the availability of DBEs and the kind of work that must be completed. Most States set a goal of 10 percent. But on occasion, States have set goals lower or higher than the national level. States have never been penalized for failing to meet their goal.

Once States set their goals, contracts are identified for DBE participation. Prime contractors must either meet the goal or show that they have made a good-faith effort to meet it. The new regulations proposed by the Department of Transportation clarify that States must accept valid showings of good-faith efforts, so that the goal will never become a quota.

The proposed regulations also ensure that only truly disadvantaged businesses can participate in the DBE program. Currently, although women and minorities are presumed to be DBEs, those who are not economically disadvantaged are excluded from the program. The new regulations will ensure the integrity of the program by requiring that women and minorities certify that they are disadvantaged and provide a summary of net worth. The presumption may be challenged at any time by the State or the local certifying agency, the Federal Government, or any third party.

Contracting firms owned by white males may also participate in the DBE program, and the proposed regulations clarify the existing requirements for certification. In fact, Randy Pech—the owner of the Adarand Construction Company involved in the Supreme Court case—is seeking DBE certification.

Discrimination by general contractors is a major obstacle faced by women and minorities. But there are many others. A white contractor with a background identical to that of an African American contractor can expect to receive over 50 times as many loan dollars per dollar of equity capital. A study of contractors in Atlanta found that 19 percent of nonminority firms had unlimited bonding capacity—a privilege granted to no minority firm, regardless of size.

Similarly, an African American owned company in Georgia found that if it sent white employees posing as owners of a white-owned company to purchase supplies, they could receive price quotations two-thirds lower than those quoted to the parent company.

Discrimination in the form of higher quotations from suppliers is commonplace. A recent survey reported that 56 percent of African American business owners, 30 percent of Latino business owners, and 11 percent of Asian owners had experienced this discrimination.

Yet, despite the exclusion, the mistreatment, and the prejudice that women and minority businesspeople experience every day—despite the clear and convincing evidence that the DBE program and others like it have given women and minorities a first, fair chance to succeed, there are those who want to eliminate this sensible program.

Some argue that the DBE program is unconstitutional. But, the Supreme Court's Adarand decision did not strike down the program, nor does it prevent Congress from supporting measures to respond to the pervasive discrimination that still exists in this country.

The Supreme Court, in reviewing this issue, has said only that Federal race-conscious programs must undergo ''strict scrutiny''—they must be narrowly tailored to meet a compelling governmental interest.

The Court did not say that affirmative action programs are unconstitutional. What the Court did say is that:

> [W]e wish to dispel the notion that strict scrutiny is ''strict in theory, but fatal in fact.'' The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it.

To ensure that the DBE program passes the strict scrutiny test, the Department of Transportation is currently completing new regulations that give priority to race-neutral measures. The regulations also emphasize that States must award contracts to bidders who document adequate good-faith efforts, even if the bidder doesn't meet

the DBE goal. In addition, the regulations clarify DBE certification standards, including the eligibility of white males who prove disadvantage.

We know that properly administered programs can meet the strict scrutiny test. State and local programs implemented after the Supreme Court's Croson decision prove this point completely.

I urge my colleagues to vote against the amendment offered by Senator MCCONNELL. I support education and outreach efforts to eliminate discrimination. But they are not enough alone to end the discrimination that clearly exists. Congress must remain committed to taking needed steps to guarantee equal opportunity for all Americans.

Mr. President, I yield back the remaining time.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. The Senator from Indiana is around. Someone can check the cloakroom. He is, as far as I know, the last speaker on this side for the evening. He is on his way, I am told.

The PRESIDING OFFICER. Does the Senator suggest the absence of a quorum?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. 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. MCCONNELL. Mr. President, I yield to the distinguished Senator from Indiana such time as he may need.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, we are considering an amendment offered by the Senator from Kentucky, which is designed to address one part of the increasingly contentious debate over affirmative action. The Supreme Court's ruling in the Adarand decision most probably makes the existing Disadvantaged Business Enterprise Program unconstitutional; and, therefore, I think the Senator's amendment is appropriate.

There is a growing sense, however, that as well-intentioned as affirmative action and set-aside programs are, whether they are constitutional or not, really in any way can be reconciled to the American commitment to equal justice under law. At the same time, I think it is important to point out that Americans do remain deeply troubled by the persistent poverty and lack of opportunity that quotas and affirmative action were originally meant to remedy. As unemployment approaches zero in much of the country, the inner cities are still overwhelmed by double-digit joblessness, social breakdown, and education failure.

I want to be clear here this evening: Quotas and set-asides are not the answer to these problems. We have tried that. It has not worked. It does, I believe, violate constitutional principles of equal justice under law. Set-asides and quota programs have been largely a non sequitur to the social and economic questions faced by the urban poor.

Quotas and set-asides do not strengthen civil society and do not strengthen our neighborhoods. It is the churches and charities and volunteer groups and community associations that bind neighborhoods together, along with strong families. That is what makes progress possible in these areas, not a statute written by the Congress that attempts to force a solution that cannot be forced.

Quotas and set-asides do not foster the kind of spirit of entrepreneurship, that is necessary and needed in these communities, by encouraging the creation of the kinds of small businesses that provide employment and help anchor community life. And they do nothing at all for millions of children who are trapped primarily in urban public schools serving primarily low-income families—schools which, by any measure, are failing to provide adequate education for children who are trapped in this school system.

When it comes to the real concerns of urban America, the national debate over set-asides and quotas is just off the mark, Not just off the mark; it is irrelevant. An unfortunate side effect of this debate, however, is that it gives the impression that those who support the amendment of the Senator from Kentucky have nothing else to say about the real concerns of poor Americans living in inner cities, all they want to do is eliminate the one advantage that individuals have.

Now, in the warp and woof of this quota debate, these supporters—Republicans, conservatives, and the others—are painted as largely unknowing and uncaring and uninterested in the real concerns of the poor. Now, if this charge was warranted, it would be a tragedy—a tragedy for our party, a tragedy for conservatives, a tragedy for Republicans. But such a charge is not warranted.

Those who would support the amendment from the Senator from Kentucky, those who would acknowledge that the quota set-aside program has not addressed the real problems, are not those without alternative proposals. They are not those who don't share the concerns of the poor. We, as a group, have put considerable time and energy and thought into new approaches to helping restore our cities, renewing the hopes and dreams of those who live on some of America's meanest streets and meanest neighborhoods, addressing their concerns for the need for community empowerment, for strengthening families.

Several years ago, I introduced a package of proposals under the title of ''Projects for American Renewal.'' It attempted, through a series of initiatives of Federal seeding and Federal support, demonstration programs, and grants, to accomplish a number of things, but primarily falling in three areas: Strengthen families, because families are so key to the strength and stability of communities, but recognizing that not all families are intact; and promoting the role of mentors, organizations and individuals that can provide support for children who don't have fathers at home to help them. It addressed the need for strengthening those community institutions—institutions of charities and nonprofits, churches, synagogues, and other institutions within the community that can reach out and address some of these most fundamental social programs in ways that government programs never have and never will.

It sought to provide for community renewal through a series of empowerment measures and economic empowerment measures designed to gather capital, build businesses, and provide job opportunity and job growth for businesses within communities that needed the help the most.

For the past 18 months, a group of us have been meeting under the title of ''Renewal Alliance,'' a group of roughly 30 Republican Members of the House and Senate seeking to craft a new program of outreach and empowerment to our Nation's urban areas and to our Nation's poor. We have rejected the failed model of the past, the top-down Federal programs that have brought devastation in inner-city communities. We have also, however, rejected a ''hands off'' approach that believes the best Federal urban policy is no policy at all.

Instead, we have attempted, through the Renewal Alliance, to provide an opportunity agenda for urban America. We acknowledge that there is at least a startup role that the Federal Government can play, primarily through the Tax Code changes and through some seed money, but we also want to make sure that the role of the Government is that of a supporter and an encourager and a partner to local leaders and institutions who know firsthand what America's urban problems are and are already well on their way to finding solutions.

It is clear to us that from the range and complexity of problems plaguing our inner cities, that capital development—social, human, and economic capital—is the key to the long-term renewal of urban communities.

Our plan addresses this problem at three levels. First, through a charity tax credit and an expanded charitable choice program, we shift authority and resources away from government and toward those private charitable, religious, and voluntary organizations

that undergird the life of local communities. We support private economic development through targeted tax incentives and regulatory relief. And we address the dramatic educational defects of urban schools by providing publicly funded scholarships for poor children to attend schools of their choice.

I will take a few minutes—with the indulgence of the proponent of this amendment, my good friend, the Senator from Kentucky—to in more detail describe the Renewal Alliance agenda and its vision for urban America.

First let me talk about community empowerment. Community activist Bob Woodson said there is no social program in America today that is not being solved somewhere by someone. The most intractable problems we face—drug addiction, teen pregnancy, homelessness, youth violence—are being conquered by community leaders most of us have never heard of. Pastor Freddie Garcia of San Antonio has a drug treatment program that has an 80 percent success rate, compared to the single-digit performance of government programs. An independent study of Big Brothers-Big Sisters found among at-risk youth, adult mentoring cut first-time drug use by 46 percent, school absenteeism by 52 percent, and violent behavior by a third.

These are just two of hundreds of examples of programs and individuals involved in leading those programs that are making a difference in dealing with these difficult social problems that plague different communities, neighborhoods, and families in America.

We propose a package of reforms that will strengthen these institutions, these charities, these volunteer groups, that bind communities together and actually heal individual lives. We want to continue the work of the 1996 welfare reform by encouraging States to transfer more authority and resources to the private nonprofit groups and religious groups through State-based charity tax credits.

Our bill also expands and strengthens the charitable provisions contained in the 1996 welfare bill to permit faith-based institutions to compete for all types of Federal human services contracts. The Community Empowerment Initiative also builds on last year's Volunteer Protection Act by limiting the liability of businesses that provide equipment or facilities for use by charitable organizations.

The second component of our Renewal Alliance program is economic empowerment. One of the great under-reported stories of America's booming economy is the fact that tight labor markets are increasingly forcing businesses to look to inner cities for labor. In Wisconsin, Allen-Edmonds Shoes last year moved a major facility from Port Washington to inner-city Milwaukee to take advantage of the untapped labor pool there. The city of Indianapolis has engaged in an aggressive program to bring businesses into poor neighborhoods by reducing regulations and promoting the relative lack of economic competition in inner-city communities.

Our legislation wants to build on these trends. We target the 100 poorest communities in our Nation with tax and regulatory relief designed to spur economic growth on a long-term basis. Our plan reduces to zero the capital gains tax for investments in troubled areas, increases the expensive plants and equipment purchases by small businesses in the zones, and allows businesses in these zones to receive a 20 percent wage credit for hiring qualified low-income workers. To qualify for these benefits, States and localities must agree to reduce local tax rates and fees within the renewal community and to waive local and State occupational licensing regulations. The proposal would also create family development accounts that encourage low-income families to save a portion of their income or of their EITC refunds, to be matched by private contributions which would be available for the purchase of a home, education expenses, or creation of a small business.

The third part of our program is educational choice for low-income families. The recent survey on urban education by Education Week reemphasized the alarming state of our urban schools. Nationwide, just 43 percent of students attending urban schools meet the most minimal standards for reading comprehension. In schools in high poverty areas, only 23 percent meet the basic standard. This pattern held true in math and science, as well as reading.

Urban parents whose children are trapped in schools in which failure is virtually guaranteed are increasingly demanding real change and real alternatives. Publicly and privately financed scholarship programs are now operating at over 30 cities. Early studies of these programs show substantial academic improvement among participating students and a sharp jump in parental satisfaction with the education their children are receiving are the results and consequences of these initiatives.

Our legislation tackles the education problems faced by inner-city children from two different angles. First, we call for a large-scale test of publicly funded scholarships for poor children. We believe these scholarships would provide some immediate relief for families and inject badly needed competition in the public school system. The scholarships would also put real pressure on the public system for real reform as families begin shopping for schools that work. I am pleased to offer these initiatives here on the Senate floor with Senator LIEBERMAN on a bipartisan basis in the past several years, and we want to continue to do that.

The second part of the renewal education reform plan is targeted at relieving the regulatory burden faced by urban schools. Administrators routinely complain that although the Federal Government provides only a fraction of overall education funding, it imposes an overwhelming majority of the paperwork. Our bill would provide an education flex waiver for urban school districts that will permit them to devote more of their dollars to the classroom and less time filling out forms.

This is the Renewal Alliance plan in brief: To restore urban America, community empowerment, economic renewal, educational choice, and reform. We do so not by putting the Federal Government in charge, but by bringing it alongside as a supporter of those individuals and those civic institutions, nonprofits, churches and charities, synagogues and parishes, that are already at work rebuilding lives and rebuilding neighborhoods.

Mr. President, I will vote for the McConnell amendment. I believe the constitutional case for it is compelling. The Senator from Kentucky has crafted a measure that I believe addresses the issue of encouraging participation by the underprivileged of taking advantage of the highway funding that will result from passage of this bill. But I don't want this vote to be interpreted as the answer to the problems that affect the underprivileged, the answer to the problem that affects our communities. We need to do much more. We need a much more comprehensive effort.

The Renewal Alliance has proposed such an effort. It is not written in stone. It is open to amendment. It is open to suggestion. It doesn't answer the whole problem, but it moves us in a substantial direction toward solving that problem. I'm going to discuss this in greater detail. We will be offering this legislative package. We will be exploring opportunities throughout this legislative session to debate and vote on all or some of this package of proposals.

I am joined by a number of my colleagues here in the Senate. I hate to start naming names, but key among them are Senator SANTORUM and Senator ABRAHAM. We are working with an expanded group of Senators who have real concerns and want to propose real solutions to some of the most difficult problems we face as a Nation.

So with that, Mr. President, we will be saying more and doing more on this initiative in the future, but I wanted to take this opportunity to at least inform our colleagues that this vote is simply the opening foray into an area that I think the Senate needs to seriously address and give serious debate and initiatives toward solving. I look forward to the opportunity to continue this effort.

I yield the floor.

Mr. SESSIONS. Will the Senator yield?

Mr. COATS. I am happy to yield to the Senator.

Mr. SESSIONS. First, I congratulate the Senator very much on this renewal idea and community empowerment. I had the opportunity to serve as a U.S.

attorney and be a coordinator of a communities-based revitalization program known as Read and See in Mobile and Martin Luther King Jr. neighborhoods—a great neighborhood that declined dramatically over the years.

What we did first was we had a big town meeting, a community meeting of the leaders and the people who live there. We broke up into discussion groups and we listed priorities. All 10 groups listed priorities that they thought their community needed most. First, I remember distinctly that every group listed crime. They wanted a safer neighborhood for their children and their families to live in. They listed programs where they wanted their churches to be stronger in helping kids. As I recall, I can't think of a single one that listed a preferential contract for businesspeople as a need for that community.

Is that what the Senator was saying and suggesting, that we really need to deal with deeper problems than the kind we may be so politically engaged in now?

Mr. COATS. That is precisely what I was saying. I appreciate the Senator's experience and involvement with programs that are locally based and really make a difference in people's lives. What I was trying to say here is that we are faced with a situation where we have a statute on the books that appears to be unconstitutional. I think it goes against the grain of equal treatment under the law—something that is the foundation for what this country believes in. But I didn't want to misinterpret it as the attempt, this year, by the U.S. Senate or U.S. Congress in addressing problems that affect people that are called ''underprivileged'' or ''low-income'' or ''minorities'' or people who live in targeted urban areas. There are deeper problems. There are problems that have defied the Federal solution and have defied the legislative solution but have lent themselves to local solutions, often faith-based solutions, or nonprofit, charitable solutions that we can't write statutes for. Can we assist in the transition of moving the Government from a ''one-size-fits-all, let Washington solve the problem,'' to an aspect of greater involvement of these organizations in dealing with these problems? I think we can. What we are trying to do here is outline some steps that we believe we should take in order to accomplish that.

I appreciate the continued support of the Senator from Alabama and his interest in this and his experience in this. I welcome his participation, as he has offered in the past and I know he will in the future, in terms of our Renewal Alliance efforts.

Mr. SESSIONS. Mr. President, I agree with that. Every group that listed ideas for that neighborhood—all of their ideas were good and all of those ideas would work. I think you are correct, Senator COATS, in how you are approaching this idea. I believe that we need to allow the people in our communities to develop plans for their own neighborhoods, to make them work, and we will get a lot better ideas than some of the programs that have been conjured up in this Congress.

Mr. COATS. Mr. President, I thank the Senator and yield the floor.

UNANIMOUS CONSENT AGREEMENT—S. 1173

Mr. CHAFEE. The majority leader has informed me that there will be no more rollcall votes tonight. Second, I ask unanimous consent at 9:30 a.m. on Friday, March 6, the Senate resume the pending McConnell amendment regarding contract preferences and there be 90 minutes remaining for debate, equally divided between opponents and proponents, with 45 minutes of that time equally divided between Senators BAUCUS and CHAFEE, and at 11 a.m. on Friday, the Senate proceed to a vote on or in relation to the amendment, and no other amendments be in order prior to that vote. I further ask consent that if the amendment is not tabled, it be open to further amendment and debate.

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

Mr. CHAFEE. In light of the agreement, as I previously announced, there will be no further rollcall votes this evening. The next rollcall vote will occur tomorrow morning at 11 a.m.

Mr. BAUCUS. Mr. President, I see the distinguished Senator from California on the floor. She would like to address the McConnell amendment.

I yield 5 minutes to the distinguished Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, it is indeed an honor to participate in this debate, a very important debate.

Mr. President, I will be voting against the McConnell amendment, which would eliminate the Department of Transportation's highly successful Disadvantaged Business Enterprise Program. The main reason I am doing it—and there are many reasons—is because this program is of great benefit to small businesses in my State.

Now, opponents of this program have attempted to label it a quota system. I oppose quotas because quotas are bad policy and quotas are unconstitutional. The people of California feel very strongly against quotas. But what is important to note, as so many of my colleagues have pointed out, the DBE Program is far from a quota program. It is, in fact, a flexible outreach program with goals that bring into the highway contracting industry many small businesses which might otherwise be overlooked or left out.

Now, this program is so flexible, Mr. President, that no State has ever been fined, no State has ever been reprimanded for not meeting the goal, because there is no quota; there is a goal.

Now, we know that small business growth has been the most incredible dynamic in California's economic recovery. There is no way—no way—that a Senator from California, in my opinion, should vote against anything that would put a damper on this extraordinary growth.

What is interesting to me—because I have listened to the debate and I have heard Senator MCCONNELL use the term ''race-based'' several times—is that white males have always been eligible for the DBE Program. They can participate, as well as, of course, minorities and women. Now, under the new regulations, everyone who participates will have to be certified that they are in fact disadvantaged. In other words, wealthy individuals, whether they are white, whether they are black, whether they are brown, whether they are women—none of them can participate in this program if, in fact, they are not disadvantaged.

So, Mr. President, it is very clear to me—and it is as clear as it can be—that this program is about assuring every American, regardless of their background, wherever they are from, that they will have a fair chance as small businessowners to participate in this very important highway program. I want to say, as a member of the Environment and Public Works Committee, it really makes me proud to see the leadership from my chairman, Senator CHAFEE, and the ranking member, Senator BAUCUS. I think that the two of them have really shown the way.

I want to also point out that Senator WARNER, by adding his strong voice to this debate, is also making a point that in this great Nation the last thing we want to do is put a damper on the growth of small business. In fact, people talk about being colorblind. This program is colorblind. This program is open to all who need to have an opportunity.

I am very proud to stand with Senators CHAFEE, BAUCUS, WARNER, and DOMENICI in casting a vote that will, in fact, allow this program to continue. And, indeed, after I have read the new guidelines that will be coming out, I think this is going to be a program that all of us can be proud of.

Thank you very much, Mr. President.

Mr. SMITH of New Hampshire. Mr. President, I want to join my colleague from Kentucky in supporting his amendment to end one of the many costly, unfair, and unconstitutional minority set-aside programs in our federal government. As the Senator has already stated, the Intermodal Surface Transportation Efficiency Act (ISTEA) mandates that ''not less than 10 percent'' of federal highway and transit funds be allocated to ''disadvantaged business enterprises''—firms owned by officially designated minority groups presumed to be ''socially and economically disadvantaged.''

In 1995, the Supreme Court spoke on this issue in its Adarand versus Peña decision. While I will not go into detail on this decision since it has already been explained by the Senator from Kentucky, suffice it to say that both the Supreme Court and a U.S. district court have ruled that this minority

set-aside program is unconstitutional. Plain and simple, this is an affirmative action program for contractors. And, the Administration's attempt to comply with the court's decision by tinkering with DOT regulations does not meet the constitutional litmus test. Therefore, it is now incumbent on the Congress to bring ISTEA into compliance with our Constitution.

It is one thing for the Federal Government to carry out unfair, quota-based programs, which I oppose, but it is even more egregious that the Federal Government mandate that our states carry out such programs. This is a time-consuming and costly burden on some states, like New Hampshire, that simply do not have a significant racial minority population. It forces the state into situations where it is either awarding contracts to less qualified contractors or jumping through bureaucratic hoops trying to prove that it cannot meet the 10 percent DBE goal. Both of which are not good public policy.

By continuing this and the other 150-plus preferential treatment programs, we are encouraging businesses to tie their business strategy to unconstitutional programs that will eventually be eliminated by the courts. This is sending the wrong message to minority start-up businesses.

A better way to encourage minority entrepreneurs is with a small business out-reach program as outlined in the McConnell amendment. This alternative program would still provide assistance to smaller, minority-owned businesses without the heavy-handed mandate on our states.

Most Americans do not support preferential treatment programs. We now have an opportunity to end one of the many race and gender-based programs in our federal contracting system. I urge my colleagues to uphold the principles of our Constitution and support the McConnell amendment.

AMENDMENT NO. 1687

Mr. INHOFE. Mr. President, I rise today to discuss an amendment that I offered yesterday, amendment number 1687, to S. 1173, the ISTEA Reauthorization Act. This amendment was agreed to by voice vote. This amendment was cosponsored by Senator BREAUX, Senator BYRD and Senator SESSIONS.

The purpose of my amendment was to provide the necessary flexibility and funding to the States that was promised by President Clinton and EPA Administrator Browner for the new National Ambient Air Quality Standards for ozone and particulate matter. These standards were promulgated last July. My amendment in no way ratifies or affirms the underlying standards. These standards are the subject of various lawsuits and pending legislation which seeks to overturn the standards in part or in whole. This amendment simply relieves the uncertainty for the States during the implementation phase over the next few years.

The President and Administrator Browner promised a flexible implementation time frame for the standards which was not based in the Clean Air Act. This amendment ensures that the implementation of the standards would not occur at a faster rate than the President promised.

The first section of the amendment, Section 2(a) provides that the EPA will fund all of the costs for the PM monitoring network with new program dollars and just doesn't take money from other State grants. The States claim that the EPA has reprogrammed fiscal year 1998 dollars from existing State Grant authorities, the amendment requires that these funds be repaid to the States. This provides the assurance to the States that this will not be another unfunded mandate. It also restores the grant funds to the States that the EPA diverted to the monitoring program in 1998.

Section 2(b) ensures that the national network (designated in section 2(a)) which consists of the PM2.5 monitors necessary to implement the national ambient air quality standards will be established by December 31, 1999. EPA will have received the funding from Congress and they will be responsible for ensuring that the network will be in place. If they fail, they will be subject to legal action and must explain the cause of any delay.

Section 2(c) requires that the PM monitoring network be in place and that the States have three years of monitoring data before the Governors are required to submit their recommendations to the EPA. Under the Clean Air Act the Governors must examine the data and notify EPA when an area in their State violates the standards. This will stop the possibility of the EPA being sued by a citizens group demanding that an area be classified before the data has been collected. The Clean Air Act does not require the monitoring data to be collected first. But the President and the EPA promised they would wait for the three years of data. This provision provides the legal authority to wait for the data.

Section 2(d) follows the Clean Air Act and the EPA's implementation schedule, it is the EPA's official review of the Governor's recommendations. It ensures that the Governor's data and information is correct and allows EPA the time to publish the decision in the Federal Register.

Section 2(e) addresses the concerns of the farmers who believe that they will be targeted for PM 2.5 even though their emissions are larger than 2.5. The study will examine the monitoring devices to ensure that they do not capture larger particles. This section is endorsed by the American Farm Bureau who wrote, ''The agriculture community continues to be concerned over the accuracy of EPA's fine particulate measurements, especially in regard to agriculture emissions. Testimony has been given in both the Senate and House Agriculture Committees indicating concern that agriculture would be 'misregulated' due to inaccurate fine particulate measurements. This amendment will allow a comparison of EPA's approved method used to measure fine particulate and the new monitors to find if both adequately eliminate those particles that are larger than 2.5 micrograms in diameter.''

Section 3(a) follows the EPA's and the President's timeline for allowing the Governors two years to review the current ozone programs before they have to designate nonattainment areas. It allows the Governors to review the other ozone programs such as the new regional ozone transport program before they make new decisions about the new ozone standard.

Section 3(b) follows the Clean Air Act and the EPA's implementation schedule, it is the EPA's official review of the Governor's recommendations. It ensures that the Governor's data and information is correct and allows EPA the time to publish the decision in the Federal Register.

Finally, Section 4 protects the pending lawsuits so that others can raise the issues of Unfunded Mandates, Small Business Review, the validity of the standards, and other issues without having this amendment impede their legal rights. It affirmatively states that this amendment is not a ratification of the new standards and any and all legal challenges to the standards are still valid and real.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, we have completed on this side.

MORNING BUSINESS

Mr. CHAFEE. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 5 minutes each.

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

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, March 4, 1998, the federal debt stood at $5,529,409,747,928.18 (Five trillion, five hundred twenty-nine billion, four hundred nine million, seven hundred forty-seven thousand, nine hundred twenty-eight dollars and eighteen cents).

One year ago, March 4, 1997, the federal debt stood at $5,363,583,000,000 (Five trillion, three hundred sixty-three billion, five hundred eighty-three million).

Five years ago, March 4, 1993, the federal debt stood at $4,199,533,000,000 (Four trillion, one hundred ninety-nine billion, five hundred thirty-three million).

Ten years ago, March 4, 1988, the federal debt stood at $2,491,607,000,000 (Two trillion, four hundred ninety-one billion, six hundred seven million).

Fifteen years ago, March 4, 1983, the federal debt stood at $1,219,934,000,000

(One trillion, two hundred nineteen billion, nine hundred thirty-four million) which reflects a debt increase of more than $4 trillion—$4,309,475,747,928.18 (Four trillion, three hundred nine billion, four hundred seventy-five million, seven hundred forty-seven thousand, nine hundred twenty-eight dollars and eighteen cents) during the past 15 years.

MESSAGES FROM THE HOUSE

At 11:55 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to the provisions of section 203(b)(1) of Public Law 105–134, the Chair announces the Speaker's appointment of the following individuals on the part of the House to the Amtrak Reform Council for a term of five years: Mrs. Christine Todd Whitman of New Jersey, Mr. Bruce Chapman of Washington, and Mr. Christopher Gleason of Pennsylvania.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 856. An act to provide a process leading to full self-government for Puerto Rico.

At 3:20 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2369. An act to amend the Communications Act of 1934 to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes.

H.R. 3130. An act to provide for an alternative penalty procedure for States that fail to meet Federal child support data processing requirements, to reform Federal incentive payments for effective child support performance, to provide for a more flexible penalty procedure for States that violate interjurisdictional adoption requirements, to amend the Immigration and Nationality Act to make certain aliens determined to be delinquent in the payment of child support inadmissible and ineligible for naturalization, and for other purposes.

The message also announced that the House has agreed to the resolution (H. Res. 379) that the bill of the Senate (S. 104) to amend the Nuclear Waste Policy Act of 1982, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill be respectfully returned to the Senate with a message communicating this resolution.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 856. An act to provide a process leading to full self-government for Puerto Rico; to the Committee on Energy and Natural Resources.

H.R. 2369. An act to amend the Communications Act of 1934 to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 3130. An act to provide for an alternative penalty procedure for States that fail to meet Federal child support data processing requirements, to reform Federal incentive payments for effective child support performance, to provide for a more flexible penalty procedure for States that violate interjurisdictional adoption requirements, to amend the Immigration and Nationality Act to make certain aliens determined to be delinquent in the payment of child support inadmissible and ineligible for naturalization, and for other purposes; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 171. A resolution designating March 25, 1998, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy.''

By Mr. HATCH. from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1379. A bill to amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Hilda G. Tagle, of Texas, to be United States District Judge for the Southern District of Texas, vice a new position created by Public Law 101–650, approved December 1, 1990.

Sonia Sotomayor, of New York, to be United States Circuit Judge for the Second Circuit.

Susan Graber, of Oregon, to be United States Circuit Judge for the Ninth Circuit.

Sam A. Lindsay, of Texas, to be United States District Judge for the Northern District of Texas, vice a new position created by Public Law 101–650, approved December 1, 1990.

Judith M. Barzilay, of New Jersey, to be a Judge of the United States Court of International Trade.

Delissa A. Ridgway, of the District of Columbia, to be a Judge of the United States Court of International Trade.

Brian Scott Roy, of Kentucky, to be United States Marshall for the Western District of Kentucky for the term of four years.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. HUTCHISON (for herself, Mr. GRAMS, and Mr. ASHCROFT):

S. 1711. A bill to amend the Internal Revenue Code of 1986 to eliminate the marriage penalty tax, to increase the income levels for the 15 and 28 percent tax brackets, to provide a 1-year holding period for long-term capital gains, to index capital assets for inflation, to reduce the highest estate tax rate to 28 percent, and for other purposes; to the Committee on Finance.

By Mr. JEFFORDS (for himself and Mr. LIEBERMAN):

S. 1712. A bill to amend title XXVII of the Public Health Service Act and part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to improve the quality of health plans and provide protections for consumers enrolled in such plans; to the Committee on Labor and Human Resources.

By Mr. SMITH of Oregon:

S. 1713. A bill to amend section 1926 of the Public Health Service Act to encourage States to strengthen their efforts to prevent the sale and distribution of tobacco products to individuals under the age of 18 and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HOLLINGS:

S. 1714. A bill to suspend through December 31, 1999, the duty on certain textile machinery; to the Committee on Finance.

By Mr. JOHNSON (for himself and Mr. DASCHLE):

S. 1715. A bill to coordinate the Federal Government's response to communities that are adversely impacted by the closure of significant downsizing of a plant or industry located in the community; to the Committee on Governmental Affairs.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1716. A bill to direct the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop an action plan to restore the Salton Sea in California and to conduct wildlife resource studies of the Salton Sea, to authorize the Secretary to carry out a project to restore the Salton Sea, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KENNEDY:

S. 1717. A bill to amend the Immigration and Nationality Act to strength the naturalization process; to the Committee on the Judiciary.

By Mr. LIEBERMAN (for himself and Mr. DODD):

S. 1718. A bill to amend the Weir Farm National Historic Site Establishment Act of 1990 to authorize the acquisition of additional acreage for the historic site to permit the development of visitor and administrative facilities and to authorize the appropriation of additional amounts for the acquisition of real and personal property; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS (for himself and Mr. BURNS):

S. 1719. A bill to direct the Secretary of Agriculture and the Secretary of the Interior to exchange land and other assets with Big Sky Lumber Co; to the Committee on Energy and Natural Resources.

By Mr. HATCH (for himself, Mr. LEAHY, and Mr. KOHL):

S. 1720. A bill to amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes; 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. BIDEN:

S. Res. 192. A resolution expressing the sense of the Senate that institutions of higher education should carry out activities to change the culture of alcohol consumption on college campuses; to the Committee on Labor and Human Resources.

By Ms. MOSELEY-BRAUN:

S. Con. Res. 80. A concurrent resolution urging that the railroad industry, including rail labor, management and retiree organization, open discussions for adequately funding an amendment to the Railroad Retirement Act of 1974 to modify the guaranteed minimum benefit for widows and widowers whose annuities are converted from a spouse to a widow or widower annuity; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON (for herself, Mr. GRAMS, and Mr. ASHCROFT):

S. 1711. A bill to amend the Internal Revenue Code of 1986 to eliminate the marriage penalty tax, to increase the income levels for the 15 and 28 percent tax brackets, to provide a 1-year holding period for long-term capital gains, to index capital assets for inflation, to reduce the highest estate tax rate to 28 percent, and for other purposes; to the Committee on Finance.

THE TAX RELIEF AND DEBT REDUCTION ACT OF 1998

Mrs. HUTCHISON. Mr. President, today Senator ROD GRAMS and I are introducing the half-and-half bill. We like to say half-and-half is more than just rich milk. We want to have the plan in place so if we, in fact, have a surplus, we will start doing the responsible thing for the people of our country. We believe half should go to debt reduction, to start paying down the $5 trillion debt, and half should go to tax relief for the hard-working American family.

The Federal tax burden today is the greatest that it has been in the history of our country. In fact, 38.3 percent of the average family income is spent on taxes. That is a whale of a burden on people who are trying to raise children, trying to put them through college, and we are very pleased to try to bring down that tax burden with the half-and-half Tax Relief and Debt Reduction Act of 1998.

This is what our bill does. First, it eliminates the marriage tax penalty by allowing couples to file as singles. Mr. President, 21 million American couples today pay an average of $1,400 more because they got married. You see behind me an example, and this is a real example. A first-year schoolteacher in Houston is paid $27,000. A rookie police officer in Houston, TX starts out at $29,698. After they get married, their tax burden will be $638.44 more, just because they got married. We do not think that is right. We do not believe that Americans should have to choose between love and money. We want an equitable and fair burden on the taxpayers of this country, and we do not think that people who get married, who are both working, should have to pay more taxes.

The second thing our bill does is raise the income levels for the 15 and 28 percent tax brackets. For a single person, before he or she would move into the 28 percent bracket, it would go up to $35,000; a married couple, $50,000, and for a head of household it would be $40,000. The 28 percent bracket would be expanded for a single person to $71,050; a married couple at $109,950, and head of household $93,750

It is very important that we start giving that relief at these lower income and middle income levels, and that is what this bill will do.

The bill also repeals the 18-month capital gains holding period and makes it 12 months instead. It is a fact that our elderly people pay the most in capital gains taxes, and we think that is wrong. So we are going to try to reduce the holding period so our elderly people who may have to sell assets to live on will not be burdened any more than is absolutely necessary.

We index capital gains taxes for inflation in our bill. Taxpayers should not have to pay a capital gains tax in assets that have increased in value simply due to inflation. Last year we started this process of by allowing an exemption of $500,000 in capital gains for the sale of a home. That's a big help to an elderly person. We want to make it even easier for them.

We would cut the top estate tax rate from 55 percent to 28 percent. We believe estate taxes take away from the ability of Americans to realize the American dream of giving their children a better start.

So we are trying to bring down the tax burden on the hard-working American family. We believe it is important that people be able to keep more of the money they earn, and 38 percent of the average American's pay, salary, going to taxes, is too much of a burden. So I am very pleased Senator GRAMS has come on as the major cosponsor of this bill.

Mr. GRAMS: Mr. President, I rise today to join Senator HUTCHISON in introducing legislation to lockbox any budget surplus for tax relief and national debt reduction. Given this week's budget surplus projections, the ''Tax Relief and Debt Reduction Act of 1998'' is the right legislation at the right time.

Eighty-five years ago this week, the Internal Revenue Service began collecting the individual income tax, initiating 85 years of ever-increasing hardship for America's taxpaying families. Now, with a budget surplus closer and taxes at an all-time high, it is time that Washington let the taxpayers keep more of their own money, so that families can spend it meeting their own needs—whether that is child care, health insurance, clothing, or groceries. By dedicating half of any budget surplus to reducing the debt and the other half to family tax relief, Senator HUTCHISON's legislation protects the taxpayers of today while reducing the burden on the taxpayers of tomorrow. I commend her for her leadership on this timely issue.

Mr. President, I would like to offer some perspective into why we are introducing the ''Tax Relief and Debt Reduction Act'' today.

If it seems as though the media has a label for everyone these days, blame it on the era of the 15-second sound bite. At a point in history when many in the media consider brevity the most virtuous of virtues, journalists compete for our attention by whittling down their words into a kind of reporter's shorthand that, over time, becomes meaningless to news consumers.

The shorthand gets especially muddied when it is applied to politics. Once a person enters public office, the media is quick to toss them a label—conservative or liberal, left wing or right wing. As political realities evolve, though, the labels have less and less relevance as time goes on. They become a cliché, no longer very useful in describing a political philosophy.

I believe the American public has already moved beyond the media in breaking from the label mentality, and whether they consider it consciously, they have shifted their thinking from the old concept of liberal versus conservative to that of taxpayers versus big Government. Today, every action of the government is being evaluated by a standard that strikes home for the folks who work for a living, raise a family, and pay their taxes: does it benefit the taxpayers or does it benefit the Government?

What we have discovered through this new way of thinking is that far too often, the Government is prospering at the expense of the taxpayers. Too much faith in Government equals less freedom for families and individuals. Dependency on Government equals less independence for the governed. And as the Government prospers, we have learned that big Government does not necessarily translate into better Government—it is just bigger Government, with more bureaucracy, paid for by higher taxes.

Families today are taxed at the highest levels since World War II, with 38 percent of a typical family's budget going to pay taxes on the Federal, State, and local level. In nominal dollars, a two-income family is paying more just in taxes today than their paychecks totaled in 1977. That is nearly 50% more than they are spending for food, shelter, and clothing combined.

Taxpayers do not mind paying taxes when they can see results. In local government, the results are obvious: clean streets, police cars on patrol, regular garbage pickup. On the Federal level, the results are much less evident. Families want to believe Washington is

spending their tax dollars prudently, but when the evening newscasts focus repeatedly on the ''fleecing of America,'' they wonder: is the Government serving the taxpayers, or just serving itself?

There is no question the Federal Government is growing bigger. Contrary to the claim of President Clinton in his State of the Union address that ''we have the smallest Government in 35 years,'' the Federal Government will spend more tax dollars in 1998 than it has in the history of this nation—$1.7 trillion. That is a 19 percent increase since the President took office in 1993, although inflation during that same period has risen less than 14 percent.

The President would add thousands of new civilian federal employees and, according to an analysis of his budget by the Senate Budget Committee, $123 billion in new federal programs that would touch nearly every aspect of daily life, from our classrooms to our boardrooms to our bedrooms.

To pay for all that new government, the President calls for boosting taxes by $115 billion over the next five years. That is a massive hike that would effectively wipe out the hard-fought $85 billion tax cut Americans won under last year's Taxpayer Relief Act.

A big, expensive federal government is a bad deal for the taxpayers. It is an even worse deal for my fellow Minnesotans. A recent study conducted by the Northeast-Midwest Institute shows that Minnesota ranks 49th of 50 states in Federal dollars returned to the State. The people of Minnesota pay one of highest tax rates in the Nation, but only one other state receives less service in return from the Federal Government.

According to the National Taxpayers Union, if Congress could roll federal domestic spending back to 1969 levels, a family of four would keep $9,000 a year more of its own money than it does today. Millions of families would pay no income tax at all. Unfortunately, tax-and-spend, not tax relief and streamlining, is the policy Washington now pursues.

The most disturbing sign that the taxpayers are losing the ''taxpayers versus big government'' debate is the rush in Washington to spend a budget surplus that does not yet exist. If a surplus does develop, the Government has no claim on it because the Government did not generate it. A surplus will be borne of the sweat and hard work of the American people, and it therefore should be returned to the people as called for under the ''Tax Relief and Debt Reduction Act of 1998.''

When Washington serves itself instead of meeting the needs of its owners, the taxpayers, spending rises, taxes increase, responsibilities are neglected, and people begin to feel constricted by a Government they sense is deeply out of touch. At their urging, we have begun to turn the focus away from the smothering squeeze of big government toward families and new partnerships that move Washington from the center of the circle to another spoke along its hub. Where the Federal Government once held all the power, communities—local churches, nonprofit organizations, job providers, individual volunteers, and charities of all types—have stepped forward to work with neighbors to attack problems on the local level.

Freedom for families also means giving families the freedom to spend more of their own dollars as they choose. We have taken steps in Washington to return more of that control to working Minnesotans and all working Americans, through tax relief, beginning with passage last year of the $500 per-child tax credit.

Mr. President, the states offer us an excellent model of how we should use a future budget surplus. In recent years, many Republican governors cut taxes and shrank the size of their governments, and in the process turned budget deficits into surpluses. They are now using those surpluses to provide further tax relief. Take my own State of Minnesota, for example. When Governor Arne Carlson was elected to office in 1990, he inherited a deficit greater than $1.8 billion and a government that was spending 15 percent faster than the rate of inflation. Today, the State government has a $1.3 billion budget surplus. Now the Governor is using the surplus to give Minnesotans a property tax cut and an increase in the education homestead credit. Returning a future surplus to those who created it, the Nation's hardworking taxpayers, is the right way to use that surplus.

I agree with President Clinton that saving Social Security is vitally important. But I believe we can save Social Security and provide tax relief simultaneously, if we have the political will to enact sound fiscal policies. The best way to save Social Security is to stop looting the Social Security surplus to fund general Government programs, return the borrowed surplus to the trust funds, and begin real reform to change the system from ''paygo'' to one that is prefunded.

As the Federal Government has grown, it is ironic that it has grown further away from the one thing from which it derives its strength. And that is the people. In 1998, Congress and the President have the power to bring government closer to the people, to refocus its attention on serving the taxpayers, not fortifying itself. Yet, while Washington may have the power to change, does it have the resolve to change? I believe it does, because if we intend to reduce the growing burden awaiting the next generation of taxpayers, ''Failure is not an option.''

In closing, the Hutchison legislation would help move government toward the taxpayers and toward greater accountability, and I urge my colleagues to support it.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank Senator GRAMS for taking a leadership role in this. He has been dedicated, since he was elected to the U.S. Senate, to sound fiscal policies. I think this bill is a sound approach to any surplus that we might have. I appreciate his cosponsorship.

I ask unanimous consent to add Senator ASHCROFT as a third original cosponsor of the bill.

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

Mrs. HUTCHISON. Mr. President, just to sum up. I think the Hutchison-Grams-Ashcroft half and half bill is sound policy. It is a responsible approach. If we, indeed, have worked hard and cut the deficits and will go toward a balanced budget even sooner than we thought, I think we create a great dilemma of what to do with the surplus. Because we have worked so hard and become more efficient, I hope we will take this opportunity not to backslide, not to go into more spending programs that will put us in the same situation we were before, but instead take the opportunity to start paying down the $5 trillion debt.

So this would be an opportunity to start paying down the debt and put in the pockets of hard-working Americans more of the money they earn. Thirty-eight percent of a person's income is too much to be doling out to Government programs that you may or may not think are a good priority.

So we are going to try to lessen that at the same time that we begin to pay down the debt so our children and grandchildren will not have to take from us that kind of burden. Thank you, Mr. President. I thank the managers of the bill for allowing us to take this time to introduce the bill.

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. 1711

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Half and Half: Tax Relief and Debt Reduction Act of 1998''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) SECTION 15 NOT TO APPLY.—No amendment made by section 3 shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

SEC. 2. COMBINED RETURN TO WHICH UNMARRIED RATES APPLY.

(a) IN GENERAL.—Subpart B of part II of subchapter A of chapter 61 (relating to income tax returns) is amended by inserting after section 6013 the following new section:

''SEC. 6013A. COMBINED RETURN WITH SEPARATE RATES.

''(a) GENERAL RULE.—A husband and wife may make a combined return of income taxes under subtitle A under which—

''(1) a separate taxable income is determined for each spouse by applying the rules provided in this section, and

''(2) the tax imposed by section 1 is the aggregate amount resulting from applying the separate rates set forth in section 1(c) to each such taxable income.

''(b) TREATMENT OF INCOME.—For purposes of this section—

''(1) earned income (within the meaning of section 911(d)), and any income received as a pension or annuity which arises from an employer-employee relationship, shall be treated as the income of the spouse who rendered the services, and

''(2) income from property shall be divided between the spouses in accordance with their respective ownership rights in such property.

''(c) TREATMENT OF DEDUCTIONS.—For purposes of this section—

''(1) except as otherwise provided in this subsection, the deductions allowed by section 62(a) shall be allowed to the spouse treated as having the income to which such deductions relate,

''(2) the deduction for retirement savings described in paragraph (7) of section 62(a) shall be allowed to the spouse for whose benefit the savings are maintained,

''(3) the deduction for alimony described in paragraph (10) of section 62(a) shall be allowed to the spouse who has the liability to pay the alimony,

''(4) the deduction referred to in paragraph (16) of section 62(a) (relating to contributions to medical savings accounts) shall be allowed to the spouse with respect to whose employment or self-employment such account relates,

''(5) the deductions allowable by section 151 (relating to personal exemptions) shall be determined by requiring each spouse to claim 1 personal exemption,

''(6) section 63 shall be applied as if such spouses were not married, and

''(7) each spouse's share of all other deductions (including the deduction for personal exemptions under section 151(c)) shall be determined by multiplying the aggregate amount thereof by the fraction—

''(A) the numerator of which is such spouse's adjusted gross income, and

''(B) the denominator of which is the combined adjusted gross incomes of the 2 spouses.

Any fraction determined under paragraph (7) shall be rounded to the nearest percentage point.

''(d) TREATMENT OF CREDITS.—Credits shall be determined (and applied against the joint liability of the couple for tax) as if the spouses had filed a joint return.

''(e) TREATMENT AS JOINT RETURN.—Except as otherwise provided in this section or in the regulations prescribed hereunder, for purposes of this title (other than sections 1 and 63(c)) a combined return under this section shall be treated as a joint return.

''(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section.''.

(b) UNMARRIED RATE MADE APPLICABLE.—So much of subsection (c) of section 1 as precedes the table is amended to read as follows:

''(c) SEPARATE OR UNMARRIED RETURN RATE.—There is hereby imposed on the taxable income of every individual (other than a married individual (as defined in section 7703) filing a joint return or a separate return, a surviving spouse as defined in section 2(a), or a head of household as defined in section 2(b)) a tax determined in accordance with the following table:''.

(c) BASIC STANDARD DEDUCTION FOR UNMARRIED INDIVIDUALS MADE APPLICABLE.—Subparagraph (C) of section 63(c)(2) is amended to read as follows:

''(C) $3,000 in the case of an individual who is not—

''(i) a married individual filing a joint return or a separate return,

''(ii) a surviving spouse, or

''(iii) a head of household, or''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter A of chapter 61 is amended by inserting after the item relating to section 6013 the following:

''Sec. 6013A. Combined return with separate rates.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 3. INCOME TAXED AT LOWEST RATE INCREASED TO $35,000 FOR UNMARRIED INDIVIDUALS, $40,000 FOR HEADS OF HOUSEHOLDS, AND $50,000 FOR JOINT RETURNS AND SURVIVING SPOUSES.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

''(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

''(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

''(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

''If taxable income is:	**The tax is:**
Not over $50,000	15% of taxable income.
Over $50,000 but not over $109,950.	$7,500, plus 28% of the excess over $50,000.
Over $109,950 but not over $155,950.	$24,286, plus 31% of the excess over $109,950.
Over $155,950 but not over $278,450.	$38,546, plus 36% of the excess over $155,950.
Over $278,450	$82,646, plus 39.6% of the excess over $278,450.

''(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

''If taxable income is:	**The tax is:**
Not over $40,000	15% of taxable income.
Over $40,000 but not over $93,750.	$6,000, plus 28% of the excess over $40,000.
Over $93,750 but not over $142,000.	$21,050, plus 31% of the excess over $93,750.
Over $142,000 but not over $278,450.	$36,007, plus 36% of the excess over $142,000.
Over $278,450	$85,129 plus 39.6% of the excess over $278,450.

''(c) SEPARATE OR UNMARRIED RETURN RATE.—There is hereby imposed on the taxable income of every individual (other than a married individual (as defined in section 7703) filing a joint return or a separate return, a surviving spouse as defined in section 2(a), or a head of household as defined in section 2(b)) a tax determined in accordance with the following table:

''If taxable income is:	**The tax is:**
Not over $35,000	15% of taxable income.
Over $35,000 but not over $71,050.	$5,250, plus 28% of the excess over $35,000.
Over $71,050 but not over $128,100.	$15,344, plus 31% of the excess over $71,050.
Over $128,100 but not over $278,450.	$33,029, plus 36% of the excess over $128,100.
Over $278,450	$87,155, plus 39.6% of the excess over $278,450.

''(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

''If taxable income is:	**The tax is:**
Not over $25,000	15% of taxable income.
Over $25,000 but not over $54,975.	$3,750, plus 28% of the excess over $25,000.
Over $54,975 but not over $77,975.	$12,143, plus 31% of the excess over $54,975.
Over $77,975 but not over $139,225.	$19,273, plus 36% of the excess over $77,975.
Over $139,225	$41,323, plus 39.6% of the excess over $139,225.

''(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

''(1) every estate, and

''(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

''If taxable income is:	**The tax is:**
Not over $1,700	15% of taxable income.
Over $1,700 but not over $4,000.	$255, plus 28% of the excess over $1,700.
Over $4,000 but not over $6,100.	$899, plus 31% of the excess over $4,000.
Over $6,100 but not over $8,350.	$1,550, plus 36% of the excess over $6,100.
Over $8,350	$2,360, plus 39.6% of the excess over $8,350.''.

(b) INFLATION ADJUSTMENT TO APPLY IN DETERMINING RATES FOR 1999.—Subsection (f) of section 1 is amended—

(1) by striking ''1993'' in paragraph (1) and inserting ''1998'',

(2) by striking ''1992'' in paragraph (3)(B) and inserting ''1997'', and

(3) by striking paragraph (7).

(c) CONFORMING AMENDMENTS.—

(1) The following provisions are each amended by striking ''1992'' and inserting ''1997'' each place it appears:

(A) Section 25A(h).
(B) Section 32(j)(1)(B).
(C) Section 41(e)(5)(C).
(D) Section 42(h)(6)(G)(i)(II).
(E) Section 68(b)(2)(B).
(F) Section 135(b)(2)(B)(ii).
(G) Section 151(d)(4).
(H) Section 221(g)(1)(B).
(I) Section 512(d)(2)(B).
(J) Section 513(h)(2)(C)(ii).
(K) Section 877(a)(2).
(L) Section 911(b)(2)(D)(ii)(II).
(M) Section 4001(e)(1)(B).
(N) Section 4261(e)(4)(A)(ii).
(O) Section 6039F(d).
(P) Section 6334(g)(1)(B).
(Q) Section 7430(c)(1).

(2) Subparagraph (B) of section 59(j)(2) is amended by striking '', determined by substituting '1997' for '1992' in subparagraph (B) thereof''.

(3) Subparagraph (B) of section 63(c)(4) is amended by striking ''by substituting for'' and all that follows and inserting ''by substituting for 'calendar year 1997' in subparagraph (B) thereof 'calendar year 1987' in the case of the dollar amounts contained in paragraph (2) or (5)(A) or subsection (f).''.

(4) Subparagraph (B) of section 132(f)(6) is amended by inserting before the period '', determined by substituting 'calendar year 1992' for 'calendar year 1997' in subparagraph (B) thereof''.

(5) Paragraph (2) of section 220(g) is amended by striking '' by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof''.

(6) Subparagraph (B) of section 685(c)(3) is amended by striking '', by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof''.

(7) Subparagraph (B) of section 2032A(a)(3) is amended by striking ''by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof''.

(8) Subparagraph (B) of section 2503(b)(2) is amended by striking ''by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof''.

(9) Paragraph (2) of section 2631(c) is amended by striking ''by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof''.

(10) Subparagraph (B) of 6601(j)(3) is amended by striking ''by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 4. 1-YEAR HOLDING PERIOD FOR ANY LONG-TERM CAPITAL GAIN.

(a) IN GENERAL.—Section 1(h)(4) (defining adjusted net capital gain) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(b) CONFORMING AMENDMENTS.—Section 1(h) is amended—

(1) in paragraph (6), by striking subparagraph (A) and inserting the following:

''(A) IN GENERAL.—The term 'unrecaptured section 1250 gain' means the amount of long-term capital gain which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent.'',

(2) by striking paragraphs (8), (10), and (11),

(3) in paragraph (9), by striking ''section 1202 gain, or mid-term gain'' and inserting ''or section 1202 gain'',

(4) by redesignating paragraph (9) as paragraph (8), and

(5) by adding at the end the following:

''(8) TREATMENT OF PASS-THRU ENTITIES.—

''(A) IN GENERAL.—The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

''(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

''(i) a regulated investment company,

''(ii) a real estate investment trust,

''(iii) an S corporation,

''(iv) a partnership,

''(v) an estate or trust, and

''(vi) a common trust fund.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 5. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

(a) IN GENERAL.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

''SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

''(a) GENERAL RULE.—

''(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Except as provided in paragraph (2), if an indexed asset which has been held for more than 1 year is sold or otherwise disposed of, then, for purposes of this title, the indexed basis of the asset shall be substituted for its adjusted basis.

''(2) EXCEPTION FOR DEPRECIATION, ETC.—The deduction for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

''(b) INDEXED ASSET.—

''(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

''(A) stock in a corporation, and

''(B) tangible property (or any interest therein), which is a capital asset or property used in the trade or business (as defined in section 1231(b)).

''(2) CERTAIN PROPERTY EXCLUDED.—For purposes of this section, the term 'indexed asset' does not include—

''(A) CREDITOR'S INTEREST.—Any interest in property which is in the nature of a creditor's interest.

''(B) OPTIONS.—Any option or other right to acquire an interest in property.

''(C) NET LEASE PROPERTY.—In the case of a lessor, net lease property (within the meaning of subsection (h)(1)).

''(D) CERTAIN PREFERRED STOCK.—Stock which is preferred as to dividends and does not participate in corporate growth to any significant extent.

''(E) STOCK IN CERTAIN CORPORATIONS.—Stock in—

''(i) an S corporation (within the meaning of section 1361),

''(ii) a personal holding company (as defined in section 542), and

''(iii) a foreign corporation.

''(3) EXCEPTION FOR STOCK IN FOREIGN CORPORATION WHICH IS REGULARLY TRADED ON NATIONAL OR REGIONAL EXCHANGE.—Clause (iii) of paragraph (2)(E) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, or any domestic regional exchange for which quotations are published on a regular basis other than—

''(A) stock of a foreign investment company (within the meaning of section 1246(b)), and

''(B) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

''(c) INDEXED BASIS.—For purposes of this section—

''(1) GENERAL RULE.—The indexed basis for any asset is—

''(A) the adjusted basis of the asset, increased by

''(B) the applicable inflation adjustment.

''(2) APPLICABLE INFLATION ADJUSTMENT.—The applicable inflation adjustment for any asset is an amount equal to—

''(A) the adjusted basis of the asset, multiplied by

''(B) the percentage (if any) by which—

''(i) the chain-type price index for GDP for the last calendar quarter ending before the asset is disposed of, exceeds

''(ii) the chain-type price index for GDP for the last calendar quarter ending before the asset was acquired by the taxpayer.

The percentage under subparagraph (B) shall be rounded to the nearest 1/10 of 1 percentage point.

''(3) CHAIN-TYPE PRICE INDEX FOR GDP.—The chain-type price index for GDP for any calendar quarter is such index for such quarter (as shown in the last revision thereof released by the Secretary of Commerce before the close of the following calendar quarter).

''(d) SPECIAL RULES.—For purposes of this section—

''(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

''(A) a substantial improvement to property,

''(B) in the case of stock of a corporation, a substantial contribution to capital, and

''(C) any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

''(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—

''(A) IN GENERAL.—The applicable inflation ratio shall be appropriately reduced for calendar months at any time during which the asset was not an indexed asset.

''(B) CERTAIN SHORT SALES.—For purposes of applying subparagraph (A), an asset shall be treated as not an indexed asset for any short sale period during which the taxpayer or the taxpayer's spouse sells short property substantially identical to the asset. For purposes of the preceding sentence, the short sale period begins on the day after the substantially identical property is sold and ends on the closing date for the sale.

''(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

''(4) SECTION CANNOT INCREASE ORDINARY LOSS.—To the extent that (but for this paragraph) this section would create or increase a net ordinary loss to which section 1231(a)(2) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

''(5) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

''(6) COLLAPSIBLE CORPORATIONS.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

''(e) CERTAIN CONDUIT ENTITIES.—

''(1) REGULATED INVESTMENT COMPANIES; REAL ESTATE INVESTMENT TRUSTS; COMMON TRUST FUNDS.—

''(A) IN GENERAL.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

''(B) RATIO OF 90 PERCENT OR MORE.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

''(C) RATIO OF 10 PERCENT OR LESS.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

''(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE INVESTMENT TRUSTS.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

''(E) QUALIFIED INVESTMENT ENTITY.—For purposes of this paragraph, the term 'qualified investment entity' means—

''(i) a regulated investment company (within the meaning of section 851),

''(ii) a real estate investment trust (within the meaning of section 856), and

''(iii) a common trust fund (within the meaning of section 584).

''(2) PARTNERSHIPS.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

''(3) SUBCHAPTER S CORPORATIONS.—In the case of an electing small business corporation, the adjustment under subsection (a) at the corporate level shall be passed through to the shareholders.

''(f) DISPOSITIONS BETWEEN RELATED PERSONS.—

''(1) IN GENERAL.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

''(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

''(A) persons bearing a relationship set forth in section 267(b), and

''(B) persons treated as single employer under subsection (b) or (c) of section 414.

''(g) TRANSFERS TO INCREASE INDEXING ADJUSTMENT OR DEPRECIATION ALLOWANCE.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is—

''(1) to secure or increase an adjustment under subsection (a), or

''(2) to increase (by reason of an adjustment under subsection (a)) a deduction for depreciation, depletion, or amortization,

the Secretary may disallow part or all of such adjustment or increase.

''(h) DEFINITIONS.—For purposes of this section—

''(1) NET LEASE PROPERTY DEFINED.—The term 'net lease property' means leased real property where—

''(A) the term of the lease (taking into account options to renew) was 50 percent or more of the useful life of the property, and

''(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property.

''(2) STOCK INCLUDES INTEREST IN COMMON TRUST FUND.—The term 'stock in a corporation' includes any interest in a common trust fund (as defined in section 584(a)).

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 is amended by inserting after the item relating to section 1021 the following new item:

''Sec. 1022. Indexing of certain assets for purposes of determining gain or loss.''.

(c) ADJUSTMENT TO APPLY FOR PURPOSES OF DETERMINING EARNINGS AND PROFITS.—Subsection (f) of section 312 (relating to effect on earnings and profits of gain or loss and of receipt of tax-free distributions) is amended by adding at the end thereof the following new paragraph:

''(3) EFFECT ON EARNINGS AND PROFITS OF INDEXED BASIS.—

For substitution of indexed basis for adjusted basis in the case of the disposition of certain assets after December 31, 1998, see section 1022(a)(1).''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to the disposition of any property the holding period of which begins after December 31, 1998.

(2) CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS.—The amendments made by this section shall not apply to the disposition of any property acquired after December 31, 1998, from a related person (as defined in section 1022(f)(2) of the Internal Revenue Code of 1986, as added by this section) if—

(A) such property was so acquired for a price less than the property's fair market value, and

(B) the amendments made by this section did not apply to such property in the hands of such related person.

SEC. 6. REDUCTION OF TOP ESTATE TAX RATE FROM 55 TO 28 PERCENT.

(a) IN GENERAL.—Section 2001(c) (relating to imposition and rate of tax) is amended to read as follows:

''(c) RATE SCHEDULE.—

''If the amount with respect to which the tentative tax to be computed is:	**The tentative tax is:**
Not over $10,000	18 percent of such amount.
Over $10,000 but not over $20,000.	$1,800 plus 20 percent of the excess of such amount over $10,000.
Over $20,000 but not over $40,000.	$3,800 plus 22 percent of the excess of such amount over $20,000.
Over $40,000 but not over $60,000.	$8,200 plus 24 percent of the excess of such amount over $40,000.
Over $60,000 but not over $80,000.	$13,000 plus 26 percent of the excess of such amount over $60,000.
Over $80,000	$18,200 plus 28 percent of the excess of such amount over $80,000.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 1998.

SEC. 7. REVENUE EFFECT OF ACT NOT TO EXCEED 50 PERCENT OF FEDERAL BUDGET SURPLUS.

Not later than 90 days after the date of enactment of this Act, if the Secretary of the Treasury determines that in any of the 4 succeeding fiscal years the amendments made by this Act will result in a reduction of the estimated revenues received in the Treasury for such fiscal year in an amount in excess of 50 percent of the estimated Federal unified budget surplus (if any) for such year (determined without regard to such amendments), the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a legislative proposal to appropriately modify the provisions of the Internal Revenue Code of 1986 affected by such amendments to eliminate such excess amount. Any legislation enacted for the purpose of achieving the revenue effect of such legislative proposal submitted pursuant to this subsection shall appropriately identify such purpose.

By Mr. JEFFORDS (for himself and Mr. LIEBERMAN):

S. 1712. A bill to amend title XXVII of the Public Health Service Act and part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to improve the quality of health plans and provide protections for consumers enrolled in such plans; to the Committee on Labor and Human Resources.

THE HEALTH CARE QUALITY, EDUCATION, SECURITY, AND TRUST ACT

Mr. JEFFORDS. Mr. President, today, I join with my good friend Senator LIEBERMAN to introduce the Health Care Quality, Education, Security, and Trust Act—''The Health Care QUEST Act''—in order to improve the quality of our nation's health care system and provide necessary consumer protections without adding significant new costs; increasing litigation; or micro managing health plans.

Over the past decade across the country, an extraordinary change has taken place in the delivery of health care. In 1996, over 67% of Americans received their health care through managed care—almost double the percentage that existed in 1990. However, this transition has not been problem-free. Many consumers worry that the quality of their health care is being sacrificed to cut costs. While the traditional fee-for-service health care system was guilty of over utilization and runaway costs, consumers did feel that they would get the necessary services, treatment, and information to recover from a serious illness or manage a chronic health problem. People are now worried that managed care only manages costs and, in effect, rations care. One consequence of this transformation is that Americans are losing confidence in the quality of care they receive from our health system.

The American Association of Health Plans' voluntary initiative to respond to these concerns, ''Putting Patients First,'' is an important step and I urge that they continue to expand this effort. Businesses, such as General Motors and GTE, have also initiated programs to improve the quality of the health care received by their employees. In addition, a number of states have already passed legislative initiatives to address many of the problems consumers have experienced with their health plans. However, I believe that Federal legislation is necessary because the Employee Retirement Income Security Act of 1974 (ERISA) prevents states from enforcing health care quality standards that relate to the employer-sponsored health benefits that 148 million Americans receive.

The Health Care QUEST Act addresses these concerns through four provisions. First, it creates a Health Quality Council to set national goals for improving health and serve as a resource for Congress and the President regarding health care quality. Second, it expands the duties and responsibilities of the Agency for Health Care Policy and Research (AHCPR) in order to develop the tools needed to measure and report health care quality. The Act also requires that employers and health plans provide enrollees with health plan information such as measures of consumer satisfaction and their right to access speciality health services. Finally, the Act calls for the establishment of the ''prudent layperson'' standard of access to emergency room care, the right to use an impartial independent external appeals process and the guarantee that a patient's health care professional is able to recommend the best treatment options and to serve as their advocate.

These provisions will help to restore consumers confidence in the quality of our nation's health care system and provide a level playing field—so that managed care plan compete on the basis of quality as well as cost. Based on an analysis by the Lewin Group, the added costs for information disclosure and external appeals requirements are extremely low. The estimated monthly cost per person for comparative information and for external appeals with a

three year phase-in is only $0.88. This cost estimate doesn't take into account the improved market efficiency and increased competition that the Lewin Group indicates will be achieved with these requirements.

Much of the debate over this issue to date in Washington has been conducted from two very divergent viewpoints. Many House members, and some in the Senate, believe we should regulate health care very closely, on a disease-by-disease or procedure-by-procedure basis. Another sizable camp believes that there is nothing wrong with the health care marketplace that can't be be sorted out by its own operation.

Obviously, I disagree. And Congress, too, disagreed when it confronted many of these issues in the Medicare program last year. Much of what I propose in the Health Care QUEST Act is contained in the ''Balanced Budget Act of 1997'' and applies to plans that enroll Medicare beneficiaries. Extending the same standards to the private sector will ensure that all Americans have the same rights and protections.

The states have developed comprehensive approaches that provide regulation for those components of the health care system under their jurisdiction. The challenge for the federal government is to define regulatory solutions for those sectors under federal control that advance the consumer choice health care market while recognizing the voluntary nature of our private system. These regulatory solutions, in my opinion, should not determine medical necessity, establish hospital lengths-of-stay, or impede private sector initiatives. Furthermore, we must not set into statute standards that would preclude efforts for continued quality improvement or fail to recognize the evolutionary nature of medical practice.

The McCarran-Ferguson Act of 1945 granted states the authority to regulate the business of insurance. However, ERISA preempted state law with regard to the regulation of employee benefit plans. While ERISA provides detailed standards for employer provided pensions, it provides only minimal standards for health plans. Currently about 41 percent of those who receive their health coverage through employer-sponsored plans are in self-insured health plans. The Health Care Quest Act follows the framework established under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) by setting national standards for employer sponsored plans under ERISA and a federal floor for insurance companies to follow that states can build upon.

The Health Care QUEST Act will help to restore consumer confidence in our health care system and also promote market efficiency and accountability. I look forward to working with other Senators to enact legislation this year that establishes necessary consumer protections and sets national standards to guide our nation's market based health care reform efforts.

By Mr. HOLLINGS:

S. 1714. A bill to suspend through December 31, 1999, the duty on certain textile machinery; to the Committee on Finance.

DUTY SUSPENSION LEGISLATION

Mr. HOLLINGS. Mr. President, today, I introduce duty suspension legislation designed to permit the import of certain textile weaving machinery into the United States duty free.

The equipment to be imported is not manufactured in the United States and therefore its importation will not displace domestic sourcing. Moreover, because the product at issue is manufacturing equipment, it will assist in the creation of additional jobs in the textile industry.

I believe that this is the most appropriate use of such legislation. I am therefore hopeful that this new capacity can be used to supply both domestic and foreign needs and will increase employment in the textile industry.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1716. A bill to direct the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop an action plan to restore the Salton Sea in California and to conduct wildlife resource studies of the Salton Sea, to authorize the Secretary to carry out a project to restore the Salton Sea, and for other purposes, to the Committee on Environment and Public Works.

SONNY BONO MEMORIAL SALTON SEA RESTORATION ACT

Mrs. BOXER. Mr. President, today I am introducing the Sonny Bono Memorial Salton Sea Restoration Act. My legislation will lead to an efficient and responsible restoration of the unique Salton Sea ecosystem.

Over the years, scientists, communities and politicians alike have been trying to draw national attention to the decline of the Salton Sea. Our late friend and colleague, Representative Sonny Bono, who died in a tragic skiing accident in January, worked tirelessly to make this issue an environmental priority for this Congress. With this legislation, we can carry on that legacy.

The Salton Sea is a unique natural resource in Southern California. Created in 1905 by a breach in a levee along the Colorado River, the Salton Sea is California's largest inland body of water. It is one of the most important habitats for migratory birds along the Pacific Flyway.

For 16 months after the breach, the Colorado River flowed into a dry lakebed, filling it to a depth of 80 feet. For a time following the closure of the levee, the water levels declined rapidly as evaporation greatly exceeded inflow. A minimum level was reached in the 1920s, after which the sea once again began to rise, due largely to the importation of water into the basin for agricultural purposes from the New and Alamo Rivers.

Since there is no natural outlet for the sea at its current level, evaporation is the only way water leaves the basin. All the salts carried with water that flows into the sea have remained there, along with salts re-suspended from prehistoric/historic times by the new inundation. Salinity is currently more than 25 percent higher than ocean water, and rising.

This extreme salinity, along with agricultural and wastewater in the sea, are rapidly deteriorating the entire ecosystem. The existing Salton Sea ecosystem is under severe stress and nearing collapse, with millions of fish and thousands of bird die-offs in recent years. Birds and fish that once thrived here are now threatened with death and disease as the tons of salts and toxic contaminants that are constantly dumped into the Salton Sea become more and more concentrated and deadly over time. The local economy is also being affected by the disaster at the Salton Sea by the loss of recreational opportunities, decrease in tourism, and the impact on agriculture.

Despite the urgency of the situation, we do not have the solution at hand and, therefore, must move forward swiftly, but not hastily. The legislation I am introducing today allows the Department of Interior to adequately review all options for restoring the sea and comply with all environmental laws while also requiring tight, yet realistic, time frames.

I have been working with local and national interests and received many favorable comments on my legislation. Secretary Bruce Babbitt said, ''I have had an opportunity to review the Salton Sea legislation that Senator BOXER is introducing this morning. In my judgement, the bill as drafted reflects a more thoughtful and practical approach for addressing the serious environmental challenges that face the Salton Sea. I look forward to working with the Senator in refining and, hopefully implementing this important initiative.''

John Flicker, President of the National Audubon Society said, ''The National Audubon Society strongly endorses this legislation by Senator BOXER. This bill sets in motion a process to determine the source of the ecological crisis facing the Salton Sea and provide recommendations on how to reverse the Salton Sea's rapid deterioration.''

Senator BOXER's bill represents an important step forward in the fight to save the Salton Sea,'' said Congressman GEORGE BROWN. ''She has done an outstanding job building a consensus bill that can win local and federal support.''

And the Tellis Codekas, President of the Salton Sea Authority and President of the Coachella Valley Water District said, ''Senator BOXER is on the right track with her bill. Her legislation builds on a bipartisan local and national effort to save the Salton Sea.''

I am proud of this support. Under my legislation, Interior will report to Congress within one year on the options for restoring the Salton Sea, including a recommendation for a preferred option. Interior will review ways to reduce and stabilize salinity, stabilize surface elevation, restore the health of fish and wildlife resources and their habitats, enhance recreational use and economic development, and continue the use the Salton Sea for irrigation drainage.

Interior then has another 6 months within which it must complete all environmental compliance and permitting activities required to implement the proposal. By the end of this eighteen month period, Interior must submit a final report to Congress, at which time the authorization for construction is triggered, allowing Congress 30 legislative days to make changes in the plan, or to stop it.

We all now agree that we must take the necessary long-term and short-term steps to stabilize salinity and contaminant levels to protect the dwindling fishery resources and to reduce the threats to migratory birds. However, there is no consensus on how that should be done.

The legislation that I am introducing forces those decisions to be made in a timely manner. But, it is not necessary to waive the provisions of one of our landmark environmental laws, the National Environmental Policy Act of 1969, in order to force this process. We must deal with this situation quickly. But, we can take prompt and responsible actions within the framework of environmental laws.

I would like to thank members of the Salton Sea Authority, including the Imperial County Board of Supervisors, the Riverside County Board of Supervisors, the Imperial Irrigation District, and the Coachella Valley Water District, National Audubon Society, Department of Interior, and Congressman GEORGE BROWN for their assistance with this legislation. It is with the help and support of local and national interests that I was able to develop this consensus legislation.

In a December 23, 1998 article in USA Today, Sonny said, ''This is our last chance. If we don't move within a year or two, it will be too late.'' He was right: the clock is ticking and we must act now to find a solution. Scientists have warned that the Salton Sea will be a dead sea within fifteen years.

I am hopeful that my House and Senate colleagues and I can act quickly to ensure passage of this legislation to restore the ailing Salton Sea. This is necessary and important legislation that will not only benefit Californians and our natural heritage, but will also carry on the legacy of Representative Bono.

I ask unanimous consent that the full text of my legislation be printed in the RECORD.

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

S. 1716

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 ''Sonny Bono Memorial Salton Sea Restoration Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Salton Sea, located in Imperial County and Riverside County, California, is an economic and environmental resource of national importance;

(2) the Salton Sea is a critical component of the Pacific flyway;

(3) the concentration of salinity or pollutants in the Salton Sea has contributed to the recent deaths of migratory waterfowl;

(4) the Salton Sea is critical as a reservoir for irrigation and municipal and stormwater drainage;

(5) the Salton Sea provides benefits to surrounding communities and nearby irrigation and municipal water users;

(6) remediating the Salton Sea will provide national and international benefits; and

(7) Federal, State, and local governments have a shared responsibility to assist in remediating the Salton Sea.

SEC. 3. DEFINITIONS.

In this Act:

(1) SALTON SEA AUTHORITY.—The term ''Salton Sea Authority'' means the Joint Powers Authority established under the laws of the State of California by a Joint Power Agreement signed on June 2, 1993.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Commissioner of Reclamation.

SEC. 4. SALTON SEA RESTORATION ACTION PLAN.

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary, in accordance with the memorandum of understanding entered into under subsection (f), shall prepare an action plan for restoring the Salton Sea in California.

(b) CONTENTS.—The action plan shall consist of—

(1) a study of the feasibility of various alternatives for remediating the Salton Sea;

(2) the selection of 1 or more practicable and cost-effective options for remediating the Salton Sea; and

(3) the development of a remediation plan that will implement the options.

(c) OBJECTIVES.—In preparing the action plan, the Secretary shall evaluate options that will—

(1) reduce and stabilize the overall salinity of the Salton Sea to a level between 35 and 40 parts per thousand;

(2) stabilize the surface elevation of the Salton Sea to a level that is between 240 feet below sea level and 230 feet below sea level;

(3) restore habitat and reclaim water quality over the long term to promote healthy fish and wildlife resources and their habitats in the Salton Sea;

(4) enhance the potential for recreational uses and economic development of the Salton Sea; and

(5) ensure the continued use of the Salton Sea as a reservoir for irrigation and municipal and stormwater drainage.

(d) OPTIONS.—In evaluating options under the action plan, the Secretary shall—

(1) consider—

(A) using impoundments to segregate a portion of the waters of the Salton Sea in 1 or more evaporation ponds located in the Salton Sea basin;

(B) pumping water out of the Salton Sea;

(C) augmenting the flow of water into the Salton Sea;

(D) improving the quality of wastewater discharges from Mexico (including discharges from the Alamo River, the Whitewater River, and the New River) and from other water users in the Salton Sea basin;

(E) implementing any other economically feasible remediation options; and

(F) implementing any combination of the actions described in subparagraphs (A) through (E); and

(2) limit the options to economically feasible and proven technologies.

(e) FACTORS.—In evaluating the feasibility of options under the action plan, the Secretary shall consider—

(1) the ability of Federal, tribal, State, and local government sources and private entities to fund capital construction costs and annual operation, maintenance, energy, and replacement costs; and

(2) how and where to dispose, permanently and safely, of water pumped out of the Salton Sea and any salts that may be condensed and accumulated in implementing the option.

(f) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary shall carry out the action plan under this section in accordance with a memorandum of understanding entered into with the Salton Sea Authority, the Governor of the State of California, and such other tribal or local entities as the Secretary considers appropriate.

(2) CRITERIA.—The memorandum of understanding shall, at a minimum, establish criteria for the evaluation and selection of options under this section, including criteria for determining the magnitude and practicability of costs of construction, operation, and maintenance of each evaluated option.

(g) RELATIONSHIP TO OTHER LAWS.—

(1) RECLAMATION LAWS.—

(A) IN GENERAL.—An option recommended by the action plan shall not be subject to the Act of June 17, 1902, and Acts amendatory thereof or supplementary thereto (32 Stat. 388, chapter 1093; 43 U.S.C. 371 et seq.) (including regulations adopted under those Acts).

(B) NONREIMBURSABLE AND NONRETURNABLE.—Funds provided to carry out the option shall be considered nonreimbursable and nonreturnable.

(2) LAW OF THE RIVER.—An option recommended by the action plan—

(A) shall not supersede or otherwise affect any treaty, law, or agreement governing use of water from the Colorado River; and

(B) shall be carried out in a manner that is consistent with rights and obligation of persons under all such treaties, laws, and agreements.

(h) REPORTS.—

(1) INTERIM REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress an interim report on the findings and recommendations of the action plan, including—

(A) a summary of options considered for remediating the Salton Sea; and

(B) a recommendation of a preferred option for remediating the Salton Sea.

(2) FINAL REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a final report on the findings and recommendations of the action plan, including—

(A) a plan to implement the preferred option;

(B) a recommendation for sharing costs to carry out the preferred option, with (at the option of the Secretary) a different cost-sharing formula for capital construction costs than is applied to annual operation, maintenance, energy, and replacement costs; and

(C) the completion of all environmental compliance and permitting activities required for any construction activity under the preferred option.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $30,000,000.

SEC. 5. SALTON SEA RESTORATION PROJECT.

(a) IN GENERAL.—Not later than 30 legislative days after the Secretary submits the final report required under section 4(h)(2), the Secretary shall have the authority to carry out a project for remediating the Salton Sea that is based on the preferred option recommended in the final report, unless otherwise directed by Congress.

(b) LEGISLATIVE DAY.—In subsection (a), the term ''legislative day'' means any day on which either House of Congress is in session.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $300,000,000.

SEC. 6. SALTON SEA WILDLIFE RESOURCES STUDIES.

(a) IN GENERAL.—Concurrently with the action plan carried out under section 4, the Secretary shall enter into contracts, grants, and cooperative agreements with Federal and non-Federal entities to conduct studies recommended by the Salton Sea Research Management Committee under subsection (b)(1), including studies of hydrology, wildlife pathology, and toxicology relating to the wildlife resources of the Salton Sea.

(b) SALTON SEA RESEARCH MANAGEMENT COMMITTEE.—

(1) IN GENERAL.—The Secretary shall establish a committee, to be known as the ''Salton Sea Research Management Committee'', to make recommendations to the Secretary on the selection of topics for studies under this section and management of the studies.

(2) MEMBERSHIP.—The Committee shall be composed of 4 members, of which—

(A) 1 member shall be appointed by the Secretary;

(B) 1 member shall be appointed by the Governor of the State of California;

(C) 1 member shall be appointed by the Torres Martinez Desert Cahuilla Tribal Government; and

(D) 1 member shall be appointed by the Salton Sea Authority.

(c) COORDINATION.—The Secretary shall ensure that studies under this section are conducted in coordination with appropriate international bodies, Federal agencies, and California State agencies, including—

(1) the International Boundary and Water Commission;

(2) the United States Fish and Wildlife Service;

(3) the Environmental Protection Agency;

(4) the California Department of Water Resources;

(5) the California Department of Fish and Game;

(6) the California Resources Agency;

(7) the California Environmental Protection Agency;

(8) the California Regional Water Quality Board; and

(9) California State Parks.

(d) PEER REVIEW.—The Secretary shall require that studies conducted under this section be subject to peer review.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $7,000,000.

SEC. 7. REDESIGNATION OF SALTON SEA NATIONAL WILDLIFE REFUGE RENAMED AS THE SONNY BONO SALTON SEA NATIONAL WILDLIFE REFUGE.

(a) IN GENERAL.—The Salton Sea National Wildlife Refuge, in Imperial County, California, shall be known and designated as the ''Sonny Bono Salton Sea National Wildlife Refuge''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, record, or other paper of the United States to the Refuge referred to in subsection (a) shall be deemed to be a reference to the ''Sonny Bono Salton Sea National Wildlife Refuge''.

SEC. 8. EMERGENCY ACTION TO STABILIZE SALTON SEA SALINITY.

If, during the conduct of studies authorized by this Act, the Secretary determines that environmental conditions at the Salton Sea warrant immediate emergency action to stabilize the salinity of the Salton Sea, the Secretary shall immediately submit a report to Congress documenting the conditions and making recommendations for their remediation, together with specific recommendations for actions to be required and the cost of the actions.

Mrs. FEINSTEIN. Mr. President, today I join my colleague Senator BOXER in introducing the Sonny Bono Memorial Salton Sea Restoration Act. This legislation is similar to that now pending in the House of Representatives, but it seeks to respond to concerns expressed by local, state and federal officials about problems with the House bill. Despite the fact that there are differences between the two versions, the time to address the problems of the Salton Sea has come, legislation will move forward promptly, and be signed into law.

I have spoken on this floor about the problems facing the Salton Sea. Now it is time to turn to how to solve those problems. The legislation introduced today reflects the work of scores of people in California concerned with the Salton Sea. It is consistent with the approach they believe is most appropriate, and it involves them in the process.

This legislation proceeds in two stages.

First, it provides funding and sets a deadline of 18 months for the conduct of additional scientific research on the problems facing the Salton Sea, for the evaluation of various projects to address these problems, for the selection of a specific project, and for the completion of the necessary environmental reviews required by the National Environmental Policy Act and the California Environmental Quality Act.

Second, it authorizes funding, subject to modification by Congress, for the implementation of the project that is chosen.

The research funded in this legislation is absolutely crucial, for the problems facing the Salton Sea are complex. Previously, most concerns expressed about the Sea related to its increasing salinity and its rising water level. More recently, however, massive die offs of fish and migratory birds have occurred, that appear to be caused by problems other than salinity.

So, in addition to determining the optimum elevation for the Sea, and the desirable level of salinity, it is important to understand the interrelationships between these two components and the pollutants that continue to flow into the Sea.

Finally, this legislation proposes a tight timetable for reaching a decision on the best project to solve the problems facing the Sea. However, it is my understanding that the Department of the Interior already has the authority and a limited amount of funding to begin additional testing and environmental review and is willing to do so. This means that an 18 month timetable is realistic. There has been deep concern that a 12 month timetable is insufficient if a sound plan is to evolve which also involves the rivers, now heavily polluted, which empty into and add contamination to the Salton Sea. Therefore, I urge all parties to begin working while this legislation moves through Congress.

Mr. President, in closing, I want to say that I look forward to working with my colleagues in the House to craft a bill that is acceptable to both bodies, a bill that will preserve and enhance the Salton Sea, a bill that is a fitting tribute to the memory of the late Congressman Sonny Bono, who cared so deeply about the Salton Sea. Thank you.

By Mr. KENNEDY:

S. 1717. A bill to amend the Immigration and Nationality Act to strengthen the naturalization process; to the Committee on the Judiciary.

THE NEW AMERICAN CITIZENSHIP ACT

Mr. KENNEDY. Mr. President, few aspects of immigration are more important than the naturalization of new Americans. Naturalization goes to the heart of those we welcome to join our country. Unlike those of us who were born in this country, naturalized immigrants are Americans by choice. Naturalization is the occasion when these new citizens embrace our nation, and our nation embraces them.

Unfortunately, America's immigrant heritage and history are under increasing attack today. Legal immigrants have been unfairly hurt by recent actions to deal with illegal immigration. Voting rights, welfare benefits, and naturalization itself are also under assault.

It now takes two to four years for immigrants to become naturalized citizens. The backlogs continue to increase. It is time to improve the naturalization process, and deal more responsibly with these important issues.

Today, Congressman GEPHARDT and I are introducing the ''New American Citizenship Act,'' because we believe legal immigrants deserve a fair, efficient and affordable way to become citizens. Our bill builds on the recent reforms by INS to reach out to potential new citizens, help them learn our history and form of government, and ensure that the naturalization process is one in which America can take pride.

Our bill provides increased services, and requires INS to reduce the naturalization process to six months with no backlogs. We encourage local communities to help in this effort, by disseminating information to community-

based organizations on the requirements of citizenship and the contents of the naturalization exam. Under our proposal, INS cannot increase the naturalization fee to more than $150 until they have shown progress in reducing the backlog.

In addition, we take specific steps to prevent fraud and abuse in the exam. We strengthen the fingerprint process to prevent the mistaken naturalization of unqualified applicants.

Each naturalization ceremony represents the continuing renewal and revitalization of our country. As Barbara Jordan said,

We are a nation of immigrants, dedicated to the rule of law. That is our history and our challenge to ourselves. . . . It is literally a matter of who we are as a nation and who we become as a people. E Pluribus Unum. Out of many, one. One people. The American people.

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. 1717

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 ''New American Citizenship Act''.

SEC. 2. DECLARATION AND PURPOSES.

(a) DECLARATIONS.—(1) Congress declares that it is the historic policy of the United States to welcome as new American citizens those legal immigrants who qualify for naturalization and who are committed to American democratic principles, our form of Government, and the Constitution of the United States.

(2) Congress reaffirms the existing statutory requirements for naturalization concerning good moral character, lawful and continuous residence in the United States, and an understanding of the English language and the history, principles, and form of Government of the United States.

(b) PURPOSES.—The purposes of this Act are to ensure that—

(1) the naturalization process of the United States properly welcomes those who are committed to American citizenship to participate fully in American civic life;

(2) the act of naturalization is reserved for those who meet the qualifications established by the Constitution and the laws and policies of the United States;

(3) individuals applying for naturalization are provided a fair, efficient, and affordable process;

(4) the backlog of pending applications for naturalization is reduced so that qualified applicants may become new American citizens within six months of applying for naturalization; and

(5) the Immigration and Naturalization Service provides adequate assistance and information to individuals applying for naturalization.

SEC. 3. BACKLOG REDUCTION.

(a) IN GENERAL.—The Attorney General shall present to Congress not later than 3 months after the date of enactment of this Act a detailed plan for substantially reducing the backlog at each district and regional office of the Immigration and Naturalization Service. The plan shall include specific target dates for reducing or eliminating the backlog, and the percentage of reduction that will be achieved by each target date.

(b) REPORT.—During each of the fiscal years 1998, 1999, 2000, and 2001, the Attorney General shall submit a monthly report to the Committees on the Judiciary of the Senate and the House of Representatives concerning the progress that is being made in meeting the targets to reduce the backlog of naturalization applications.

SEC. 4. EQUIPPING NEW AMERICANS FOR CITIZENSHIP.

(a) INTEGRITY OF TESTING PROCEDURES.—The Attorney General shall ensure that procedures utilized by the Immigration and Naturalization Service to carry out the standardized naturalization examinations include the following:

(1) ADMINISTRATION OF EXAMINATIONS.—

(A) PROCTORING.—All standardized naturalization examinations shall be proctored by an entity certified by the Immigration and Naturalization Service to perform such function. The Immigration and Naturalization Service may certify more than 1 entity to proctor naturalization examinations.

(B) SPECIAL RULE FOR ''FOR-PROFIT'' ENTITIES.—A for-profit organization shall not be allowed to administer or proctor the standardized naturalization examination if such organization also provides citizenship courses.

(2) PILOT PROGRAM.—During the 24-month period beginning on the date of enactment of this Act, the Attorney General, through a board or contractor determined by the Attorney General to be qualified to administer standardized examinations, shall test the feasibility of administering naturalization examinations to a representative sample of immigrants throughout the United States. The Attorney General shall allow for special arrangements for naturalization applicants who are homebound, in nursing homes, need expedited handling of their applications, or have other extenuating circumstances or incapacitations.

(A) REPORT.—Not later than 12 months after the institution of the pilot program under this subsection, the Attorney General shall submit a report to Congress regarding the future feasibility of the program.

(B) REQUIREMENTS OF BOARD OR CONTRACTOR.—The board or contractor selected by the Attorney General to develop and administer a standardized test under the pilot program shall—

(i) be qualified to administer standardized examinations and able to ensure the integrity of the examination process through the use of proctors or other appropriate means;

(ii) be able to offer the examination at multiple test sites located within immigrant communities;

(iii) prepare multiple versions of the naturalization examination to be used at each examination site, and must revise the examinations on at least a quarterly basis; and

(iv) have the ability to offer the examination with enough frequency to meet the needs of each community in which the examination is offered.

(C) APPEALS.—The Attorney General shall provide an appeals process to permit immigrants who fail the standardized naturalization examination under the pilot program to either have the examination results reviewed by an independent examiner or retake the examination at no cost.

(3) CONTENT OF TEST.—Any new or redesigned naturalization examination developed pursuant to this Act shall not create barriers to citizenship that did not exist under the examinations used before the enactment of this Act.

(b) PROVISION OF NATURALIZATION MATERIALS.—

(1) MATERIALS FOR HOME-STUDY.—The Attorney General through the Immigration and Naturalization Service shall make sufficient material, such as textbooks and sample questions, available at no cost to naturalization applicants who choose to study for the naturalization examination without the assistance of a citizenship course.

(2) HANDBOOK.—Upon request, and at the time of adjustment to or admission as a lawful permanent resident, the Attorney General shall provide each such individual with a handbook describing—

(A) the process for obtaining citizenship through naturalization, as well as information on the requirements for naturalization, including the good moral character and continuous residency requirements;

(B) information on the civics and English language portions of the naturalization examination; and

(C) the privileges and responsibilities of citizenship, including the right to vote only after taking the oath of allegiance.

(3) DISSEMINATION OF MATERIALS.—

(A) IN GENERAL.—The Attorney General shall widely disseminate, at no cost, to public schools and organizations that provide instruction on citizenship responsibilities and prepare applicants for the naturalization examination materials, such as textbooks, sample questions, and other information regarding the content of the naturalization examination that the Immigration and Naturalization Service determines relevant to assist such organizations in preparing applicants for the naturalization examination.

(B) DEVELOPMENT.—The materials described in this subsection shall be developed in consultation with adult educators and organizations that offer citizenship courses.

(c) EFFECTIVE DATE.—Except as provided in subsection (a)(2), this section shall take effect on the date that is 6 months after the date of enactment of this Act.

SEC. 5. PLAN FOR ENSURING EFFICIENCY AND INTEGRITY OF THE NATURALIZATION PROCESS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall develop a plan for ensuring the efficiency and integrity of the naturalization process.

(b) OBJECTIVES.—The plan described in subsection (a) shall have the following objectives:

(1) To substantially increase the efficiency of the naturalization process, including the development of—

(A) a system that requires the Immigration and Naturalization Service to complete the entire naturalization process in 6 months or less; and

(B) a contingency plan the Immigration and Naturalization Service will use to accommodate sudden increases in applications, including arrangements with Congress for the rapid reprogramming of funds and positions when necessary.

(2) To increase the integrity and accuracy of naturalization, by taking steps to ensure that—

(A) the fingerprint process for naturalization applicants is as accurate and secure as possible;

(B) there is clear recourse for applicants with illegible or nonexistent fingerprints, including communication in writing from the Immigration and Naturalization Service indicating the reasons for rejection of the fingerprints, and instructions on what action, if any, the applicant must take;

(C) the integrity of the naturalization examination is maintained by ensuring that the examination is applied consistently across the United States, that it adequately tests knowledge of English and civics, and

that the examination is not subject to fraud; and

(D) Immigration and Naturalization Service offices are provided with clear guidelines to ensure consistency among offices of the Service in conducting naturalization interviews, including the institution of a standard checklist for the relevant components of the applicant's file, a uniform worksheet for offices to use in determining eligibility, and a list of examples of the offenses which disqualify applicants for naturalization.

(3) To maintain proper oversight of the naturalization process, including—

(A) development of national quality assurance procedures to facilitate effective oversight of fingerprint procedures, naturalization examination centers, and final Immigration and Naturalization Service naturalization interviews;

(B) accountability of field personnel involved in the naturalization process to Immigration and Naturalization Service headquarters;

(C) outreach by national and local Immigration and Naturalization Service naturalization offices to community groups and State and local officials for the purpose of encouraging qualified immigrants to seek United States citizenship;

(D) ensuring that applicants are treated fairly and hospitably, and that a priority is given to customer service, including increased customer service training for all naturalization adjudication officers;

(E) providing naturalization applicants with adequate information on the naturalization process, procedure, and approximate timetable for the entire naturalization process; and

(F) ensuring that Immigration and Naturalization Service offices contain sufficient waiting areas with notices of procedure and instructions in languages common to the community served by the individual office.

(4) To ensure that the naturalization process will be continually updated as new innovations emerge, such as—

(A) improved data sharing and digital fingerprint technologies; and

(B) establishment of a system for local Immigration and Naturalization Service offices to share best practices regarding the naturalization process, or ideas those offices have to improve the process, and for incorporation of these lessons into ongoing naturalization planning by the Immigration and Naturalization Service.

(c) ACCESS FOR INDIVIDUALS WITH DISABILITIES.—In redesigning the naturalization process, the Attorney General shall provide written guidance to the Immigration and Naturalization Service officers and to applicants so that individuals with disabilities are afforded reasonable accommodations throughout the naturalization process, including, but not limited to, access to Immigration and Naturalization Service facilities, testing sites, and to the English language and civics portions of the naturalization examination.

SEC. 6. DETERRING NATURALIZATION FRAUD.

The Attorney General shall ensure that the naturalization fingerprint submission process deters naturalization fraud and maintains the integrity of the program by implementing the following requirements:

(1) Except in the case of law enforcement agencies designated by the Immigration and Naturalization Service to take fingerprints for naturalization applicants, fingerprint cards shall be sent directly by the Immigration and Naturalization Service, or its designee, to the Federal Bureau of Investigation for processing, rather than returning the fingerprint card to the applicant for submission.

(2) Procuring the technology to institute electronic fingerprint checks at all Immigration and Naturalization Service offices by the fiscal year 2000.

SEC. 7. ENSURING INELIGIBLE IMMIGRANTS ARE NOT NATURALIZED.

(a) CRIMINAL HISTORY BACKGROUND CHECK.—The Immigration and Naturalization Service shall ensure that a criminal history background check with the Federal Bureau of Investigation is completed for each naturalization applicant prior to the naturalization interview, including requirements that—

(1) all fingerprints shall be sent directly to the Federal Bureau of Investigation as described in section 6;

(2) prior to each naturalization interview, every naturalization file shall contain documented evidence that a criminal background check has been completed and the results of any background check that indicates an applicant has a Federal Bureau of Investigation record have been received;

(3) the Federal Bureau of Investigation shall expeditiously conduct a criminal history background check on each applicant for naturalization, and shall provide a response describing the applicant's criminal history as reflected in the Bureau's records; and

(4) where the applicant cannot provide legible fingerprints, the Federal Bureau of Investigation shall conduct a criminal history background check based on the person's name and any other method of positive identification used by the Federal Bureau of Investigation for criminal history background checks.

(b) NATURALIZATION INTERVIEWS.—All naturalization applicants, at the time of a standardized naturalization examination or interview by an adjudications officer, shall be required to demonstrate basic ability to speak and understand words in ordinary usage in the English language, in accordance with section 312(a)(1) of the Immigration and Nationality Act, unless the applicant is exempt from the requirements of that section pursuant to section 312(b) of such Act, and at the time of interview, each adjudications officer shall—

(1) question each applicant about any arrest, charge, conviction, or imprisonment which was revealed as a result of the criminal history check;

(2) determine whether any crime which the applicant reveals he or she committed is one which would disqualify the applicant from naturalization;

(3) verify that the applicant was asked all mandatory questions during the naturalization interview;

(4) refer complex cases involving potentially disqualifying crimes to a supervisory officer for review;

(5) ensure that applicants are informed that they are not United States citizens until they take the oath of allegiance; and

(6) provide each applicant with information on the legal requirements which need to be fulfilled before such applicant can register to vote.

(c) OATH OF ALLEGIANCE REQUIREMENTS.—The Immigration and Naturalization Service shall ensure that certificates of citizenship are not to be distributed to naturalization applicants prior to taking the oath of allegiance.

SEC. 8. FUNDING AND FEES.

(a) AVAILABILITY OF FUNDS.—Of the funds appropriated to the Immigration and Naturalization Service for each of fiscal years 1999, 2000, and 2001, $100,000,000 shall be made available for backlog reduction, and technological and infrastructure changes needed to ensure the appropriate conduct of naturalization activities, including the purchase of equipment for enhanced recordkeeping and fingerprint checks, the development of testing centers, the conduct of the pilot program described in section 4(a)(2), and other purposes.

(b) LIMITATION ON FEES.—

(1) IN GENERAL.—The naturalization application fee charged by the Immigration and Naturalization Service shall not exceed $150 per applicant until the backlog of pending naturalization applications has been substantially reduced in each Immigration and Naturalization Service district.

(2) BACKLOG; SUBSTANTIALLY REDUCED.—For purposes of this section:

(A) BACKLOG.—The term ''backlog'' means naturalization applications which have been pending for longer than 6 months from the time the application was submitted to the Immigration and Naturalization Service.

(B) SUBSTANTIALLY REDUCED.—The backlog of pending naturalization applications for a fiscal year shall be considered to be ''substantially reduced'' if the number of naturalization applications in the backlog in each Immigration and Naturalization Service district at the end of the fiscal year is at least 30 percent less than the number of applications in the backlog in each district at the end of the previous fiscal year.

SEC. 9. DEFINITION.

In this Act, the term ''Attorney General'' means the Attorney General, acting through the Commissioner of Immigration and Naturalization.

By Mr. LIEBERMAN (for himself and Mr. DODD):

S. 1718. A bill to amend the Weir Farm National Historic Site Establishment Act of 1990 to authorize the acquisition of additional acreage for the historic site to permit the development of visitor and administrative facilities and to authorize the appropriation of additional amounts for the acquisition of real and personal property; to the Committee on Energy and Natural Resources.

WEIR FARM VISITOR CENTER LEGISLATION

Mr. LIEBERMAN. Mr. President, I rise today to join my friend Senator DODD in introducing legislation that is vitally important to the future of Connecticut's only national park, the Weir Farm National Historic Site.

As my colleagues may recall, Weir Farm was the home of the great American painter J. Alden Weir, who is widely considered a leader of the American Impressionism movement of the late 19th Century. The brilliant natural beauty of Weir Farm's landscape served as the inspiration for much of Weir's art as well as the work of several other renowned Impressionists who often traveled to the farm at the time. The splendor and serenity of this place also moved Weir's descendants and other artists who later made their home at the farm to preserve much of the landscape in the pristine state that originally inspired the many painters who visited there.

Congress sought to protect this enormously valuable piece of our national heritage when it approved legislation that Senator DODD and I cosponsored in 1990 to make Weir Farm part of the National Park System and the first site to honor an American painter. This legislation (P.L. 101–485) authorized the Park Service to acquire 62

acres of the original Weir property along with several of the buildings that Weir lived and worked in and many of the original furnishings. The State of Connecticut strongly supported this project and helped make it possible by approving a $4.25 million bond issue to purchase the 60 acres of open space surrounding the Weir homestead. The legislation was also strongly endorsed by a coalition of 20 leading national conservation groups, including The Nature Conservancy, which owns a large preserve of open land adjacent to the park property that further enhances the park's conservation mission.

Today, thousands of visitors who make their way to Weir Farm each year can get lost in the tranquility of the place. They can tour the studio where Weir and his successors toiled and the classic New England barn that caught the eye of many visiting artists and that was rehabilitated with a generous appropriation from Congress. But something is missing—the art itself.

Sadly, these visitors cannot view the wonderful collection of Impressionist works that the park managers and supporters are in the process of acquiring through private donations. That is because there is simply no place to put them on the current site. The cramped historic buildings are ill-equipped to accommodate even a legitimate visitor center, let alone a museum-quality gallery. And the possibility of building an addition has rightly been ruled out of the question because it would distort the landscape and run counter to the park's mission of preserving the historic character of the property.

The legislation we are introducing today would help fill that void and help the park fulfill another critical part of its mission, which is to reunite Weir Farm's historic landscape with the rich array of art it inspired. Specifically, our bill would authorize the Park Service to go forward with its plan to acquire a neighboring property outside the park's boundary and build a full-fledged visitor center to house the collection of privately-acquired paintings from Weir, Childe Hassam, John Twachtman and several others. A companion version of this bill is being introduced in the House today as well by Congressman JIM MALONEY, who represents the district in which the park is located.

The Park Service approved this project as part of Weir Farm's long-term General Management Plan. The Park Service has already identified an ideal 13-acre site to house the visitor center, as well as an adjacent administrative and maintenance facility that was also called for under the management plan. The owners of the targeted site are willing sellers and the Trust for Public Land—with a donation from the Weir Farm Trust, the park's private partner—has generously agreed to act as an intermediary in the purchase by putting an option on the property to prevent it from being developed.

But for the project to go forward, Congress must first approve the acquisition and a one-time change in the park's boundary. Our legislation would do just that, providing the Park Service with the authority to acquire up to 15 additional acres and expand the park's boundary to include this new land. It would also raise the authorization for land acquisition included in the original Weir Farm legislation up from $1.5 million to $4 million.

The Park Service estimates that the total cost of acquiring the property for the future visitor center will be $1.6 million. Of that total, it is expected that approximately $500,000 would come from unexpended land acquisition funds already appropriated by Congress and state and private contributions. That leaves a Federal contribution in the neighborhood of $1.1 million, which the Park Service has indicated it will request in its budget for fiscal year 2000. The projected cost of building the visitor center and the adjoining administrative/maintenance facility is $4.7 million, of which approximately half would come from private sources and the other half would come from Federal funding through the Park Service.

This project not only has the strong support of the Park Service and the State of Connecticut but of the communities surrounding Weir Farm, which straddles the town line between Wilton and Ridgefield. A number of residents in Ridgefield, where the visitor center would be built, initially expressed concern about the impact the project could have on the neighborhood. But the park managers and the leaders of the Weir Farm Trust worked diligently to address those concerns and show the community that the visitor center would in no way threaten the pastoral nature of the area or significantly worsen traffic along the neighborhood's narrow, windy roads.

In fact, the friends of Weir Farm showed that this plan would actually enhance the conservation goals of the park and the community. It would prevent the historic character of the Weir property from being disturbed. And the proposed visitor center site would link the park to an additional 119 acres of contiguous open space owned by the state and the Town of Ridgefield. Also, an independent study showed that the proposed visitor center would not significantly impact the flow of traffic in the neighborhood, and the Park Service is confident that this plan provides the best long-term solution for managing transportation to the park site.

In addition to reaching out to local residents, the park managers and the Ridgefield town government collaborated closely with my office and Senator DODD's office to help us craft the bill we are introducing today in such a way as to ensure that the natural and historic character of the site would be preserved and to ensure the town maintained control over how the property was to be developed. As a result of these efforts, both the Ridgefield Planning and Zoning Commission and the Board of Selectmen formally approved this legislation late last year.

This was not an easy process, and I want to express my deep appreciation to Weir Farm's superintendent, Sarah Olson, and to the town leaders in Ridgefield for their cooperation and their commitment to reach a resolution that is for the good of both the community and the park.

The visitor center we're proposing to build will help Weir Farm realize its full potential not just as a pastoral prize but as a true cultural landmark, one that will likely attract art lovers from throughout the region and hopefully the nation to see Weir's jewel and its splendid setting.

The alternative, Mr. President, is that if this project does not move forward, we will have squandered a wonderfully unique opportunity to make Weir Farm the only place of its kind to wed art and artistic vision in this way. The Ridgefield Press and The Wilton Bulletin, the leading local newspapers, urged us not to let this opportunity slip away in a joint editorial published last year that strongly endorsed the visitor center project. ''Bringing the art to Weir Farm,'' the editors wrote, ''has the potential to turn the site into something more than a retreat for artists and hikers—allowing an unusual cultural experience of considerable depth.''

Senator DODD and I would ask our colleagues to help us seize this important opportunity by supporting this legislation, which would complete the mission we started eight years ago when we agreed to make Weir Farm part of the park system.

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. 1718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WEIR FARM NATIONAL HISTORIC SITE, CONNECTICUT.

(a) ACQUISITION OF LAND FOR VISITOR AND ADMINISTRATIVE FACILITIES.—Section 4 of the Weir Farm National Historic Site Establishment Act of 1990 (16 U.S.C. 461 note; Public Law 101–485; 104 Stat. 1171) is amended by adding at the end the following:

''(d) ACQUISITION OF LAND FOR VISITOR AND ADMINISTRATIVE FACILITIES; LIMITATIONS.—

''(1) ACQUISITION.—

''(A) IN GENERAL.—To preserve and maintain the historic setting and character of the historic site, the Secretary may acquire not more than 15 additional acres for the development of visitor and administrative facilities for the historic site.

''(B) PROXIMITY.—The property acquired under this subsection shall be contiguous to or in close proximity to the property described in subsection (b).

''(C) MANAGEMENT.—The acquired property shall be included within the boundary of the historic site and shall be managed and maintained as part of the historic site.

''(2) DEVELOPMENT.—

''(A) IN GENERAL.—The Secretary shall keep development of the property acquired under paragraph (1) to a minimum so that the character of the acquired property will

be similar to the natural and undeveloped landscape of the property described in subsection (b).

''(B) PARKING AREA.—Any parking area for the resulting visitor and administrative facility shall not exceed 30 spaces.

''(C) SALES.—Items sold in the visitor facilities—

''(i) shall be limited to educational and interpretive materials related to the purpose of the historic site; and

''(ii) shall not include food.

''(3) AGREEMENTS.—Prior to and as a prerequisite to any development of visitor and administrative facilities on the property acquired under paragraph (1), the Secretary shall enter into 1 or more agreements with the appropriate zoning authority of the town of Ridgefield, Connecticut, and the town of Wilton, Connecticut, for the purposes of—

''(A) developing the parking, visitor, and administrative facilities for the historic site; and

''(B) managing bus traffic to the historic site and limiting parking for large tour buses to an offsite location.''.

(b) INCREASE IN MAXIMUM ACQUISITION AUTHORITY.—Section 7 of the Weir Farm National Historic Site Act of 1990 (16 U.S.C. 461 note; Public Law 101–485; 104 Stat. 1173) is amended by striking ''$1,500,000'' and inserting ''$4,000,000''.

Mr. DODD. Mr. President, today I join with Senator LIEBERMAN in introducing legislation to add up to 15 acres to the Weir Farm National Historic Site in Connecticut for the creation of a visitor center and art gallery.

The new property is located in Ridgefield, Connecticut. Because the land is adjacent to undeveloped State and Town land, the non-profit Weir Farm Heritage Trust can ensure that the proposed visitor center and gallery will be in keeping with the pastoral theme of the historic site.

Eight years ago, Congress established Weir Farm as Connecticut's first national park and the only National Park Service site in the country dedicated to the celebration of an American painter. The 62 acre historic site contains the home and studio of the founder of American impressionism, J. Alden Weir and this rich landscape is the inspiration for many of his paintings.

Together, the National Park Service and the Weir Farm Heritage Trust seek to raise public awareness of the farm's historical and cultural significance and to preserve the farm's artistic tradition, while developing a world renown art collection and providing artist workshops. Through a Visiting Artists Program, several artists each year are invited to work within the surroundings of Weir Farm.

More than eleven thousand people visited Weir Farm in 1996 and almost ten thousand came in 1997. The Park Service estimates that by the year 2010, the number of visitors could increase to between 25,000–40,000. It is for these reasons that the Weir Farm Heritage Trust would like to acquire this land and convert an existing building into a visitor center and art gallery and construct a modest 30-space parking area. Language in the bill stipulates that the National Park Service will enter into a binding agreement with appropriate town zoning commissions to manage the projected increase in bus traffic and develop parking, visitor and administrative facilities.

In December, the Ridgefield, Connecticut Selectmen voted in favor of the land acquisition proposal. In November, the Ridgefield Planning and Zoning commission also voted in favor of the plan, after convening several public hearings on the matter.

This proposal is important to the people of Connecticut and all those who wish to see a bit of artistic history preserved in its natural state. I urge my colleagues to support this land acquisition proposal as well.

By Mr. BAUCUS (for himself and Mr. BURNS):

S. 1719. A bill to direct the Secretary of Agriculture and the Secretary of the Interior to exchange land and other assets with Big Sky Lumber Co; to the Committee on Energy and Natural Resources.

THE GALLATIN COMPLETION ACT OF 1998

Mr. BAUCUS. Mr. President, I rise today to announce the introduction of the Gallatin Land Consolidation Act of 1998. I am pleased to be joined in this introduction by my fellow members of the Montana delegation—Senator BURNS and Congressman HILL. The Gallatin Act is a bipartisan bill that is the culmination of years of hard work and unheralded cooperation between the Montana delegation, local communities, conservation and user groups, and all levels of government.

The consolidation of this area makes sense on many levels. In the Gallatin area, the Act will consolidate the historic checkerboard ownership that has muddied the waters of land management for years. This bill will establish logical and effective ownership and management of these lands. In the long run, consolidation will substantially reduce the cost to the Forest Service—and ultimately the taxpayer—of managing the Gallatin National Forest. By eliminating this checkerboard ownership pattern, the bill improves public access to Forest Service lands and reduces the disputes that currently arise over the proper location of property lines.

Perhaps most importantly, this bill will protect these areas so that our children can enjoy them just as we do. The checkerboard ownership pattern invites sprawling subdivisions. Whether those occur across the Taylor Fork, or north in the Bangtails, the effect is the same. The Forest Service lands will be diminished in value for wildlife and recreation as every other section of land is developed. This checkerboard development would also diminish the pristine vistas that make this area so special. By consolidating these lands, we can protect recreational opportunities, wildlife herds, our famous fisheries, and the area's beautiful scenery.

While consolidation benefits the entire Gallatin area, in the Taylor Fork alone, the benefits are awe-inspiring. This area is critical winter range for elk and moose and helps to sustain the largest contingent of grizzly bears in the lower forty-eight states. The conservation of the Taylor Fork, the Gallatin roaded area, and the Bangtails will allow for the continued historic uses that define the character of Montana such as hunting, grazing, recreation, and wildlife habitat protection.

I would like to take a minute to thank the Montana delegation for their hard work that has led to introduction of this Act. I also want to recognize and applaud the efforts of all the folks in Montana who have been instrumental in crafting this consolidation.

Local conservation and wildlife groups in Bozeman and in Butte have worked long and hard to ensure that this bill protects the fisheries and wildlife that make these lands unique. In response to their suggestions, we have crafted the bill to ensure that the public will be involved in planning the timber-for-land component of this exchange. In response to their suggestions, we have also provided for a fair and public process to determine the management direction for the acquired lands, and have included a restoration program to improve the environmental health of these lands. Together, these changes will ensure that these lands will be enjoyed by sportsmen and by all Montanans for generations to come.

And I would like to thank those in the timber industry who have worked to ensure that this exchange will protect Montana mills. The Independent Forest Products Association, who represents many of Montana's small mills has been ever vigilant to ensure that the Forest Service small business provisions are respected. In that vein, I would especially like to thank Al Kington, whose last-minute advice allowed us to craft the bill to provide extra protection for Montana's small mills.

I would also like to thank those who have worked so hard to ensure that the Taylor Fork is protected. The Rocky Mountain Elk Foundation has worked tirelessly to raise funds to purchase one of the sections in the Taylor Fork. Local land owners including the Kelsey's of the 9¼ Circle Ranch and the Patton's of the Black Butte Ranch and the other members of the Upper Gallatin Community, helped with those efforts and have been vocal advocates for conserving these lands for all Montanans.

I would also like to thank Gallatin County Commissioners Jane Jelinksi, Phil Olson and Bill Murdock. My staff met with the commissioners individually and as a group as we crafted this exchange. I appreciate their input and look forward to working with them in the future.

Big Sky Lumber, the private party to this exchange has negotiated the terms of this agreement in good faith. They have provided a number of concessions to make this exchange more responsive to public concerns. These include

agreements to providing public recreation access across their lands, protecting viewsheds in the Bridger Canyon area, and providing options to local landowners to allow them to purchase some of these lands following the exchange.

Last, but certainly not least, I would like to thank two public employees, Bob Dennee with the U.S. Forest Service, and Kurt Alt with the Montana Department of Fish, Wildlife and Parks. These two individuals have logged long hours on this exchange over the years and have been an invaluable resource for me and my staff.

However, it should be clear to all that our work is not done. As the bill moves through the legislative process, I will continue working to make sure that this consolidation is responsive to the people that it serves. I look forward to working with the Montana public to finalize this exchange and to protect these important lands.

Every once in a while, we are blessed to work on efforts for which we know our children will thank us. And the Gallatin Consolidation is one of those efforts. If we do not take this opportunity to address the problems that were created by the railroad land grants a century ago, we may never have another such opportunity. If we do not act now, these lands will be broken into smaller and smaller pieces—all to the detriment of our fish, wildlife, and cultural heritage. If we do not act now, it will be to the detriment of our children. However, if we succeed, our children and our grand children will be forever grateful.

Mr. President, I encourage my colleagues to join me in supporting this important effort. And I thank my colleague from Montana for his continued hard work and cooperation on this bill.

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. 1719

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 ''Gallatin Land Consolidation Act of 1998''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the land north of Yellowstone National Park possesses outstanding natural characteristics and wildlife habitats that make the land a valuable addition to the National Forest System;

(2) it is in the interest of the United States to establish a logical and effective ownership pattern for the Gallatin National Forest, reducing long-term costs for taxpayers and increasing and improving public access to the forest; and

(3) it is in the interest of the United States for the Secretary of Agriculture to enter into an Option Agreement for the acquisition of land owned by Big Sky Lumber Co. to accomplish the purposes of this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) BLM LAND.—The term ''BLM land'' means approximately 3,000 acres of Bureau of Land Management land (including all appurtenances to the land) that is proposed to be acquired by BSL, as depicted in Exhibit B to the Option Agreement.

(2) BSL.—The term ''BSL'' means Big Sky Lumber Co., an Oregon joint venture, and its successors and assigns, and any other entities having a property interest in the BSL land.

(3) BSL LAND.—The term ''BSL land'' means approximately 55,000 acres of land (including all appurtenances to the land) owned by BSL that is proposed to be acquired by the Secretary of Agriculture, as depicted in Exhibit A to the Option Agreement.

(4) FOREST SYSTEM LAND.—The term ''Forest System land'' means approximately 28,000 acres of land (including all appurtenances to the land) owned by the United States in the Gallatin National Forest, Flathead National Forest, Deer Lodge National Forest, Lolo National Forest, and Lewis and Clark National Forest that is proposed to be acquired by BSL, as depicted in Exhibit B to the Option Agreement.

(5) OPTION AGREEMENT.—The term ''Option Agreement'' means the document signed by BSL, dated _____ and entitled ''Option Agreement for the Acquisition of Big Sky Lumber Co. Lands Pursuant to the Gallatin Range Consolidation and Protection Act of 1993'', and the exhibits (including an exchange agreement) and maps attached to the agreement.

SEC. 4. GALLATIN LAND CONSOLIDATION COMPLETION.

(a) IN GENERAL.—Notwithstanding any other provision of law, if BSL offers title to the BSL land, including mineral interests, that is acceptable to the United States and meets the requirements of subsection (e)—

(1) the Secretary of Agriculture shall accept a warranty deed to the BSL land and a quit claim deed to the mineral interests in the BSL land;

(2) the Secretary of Agriculture shall convey to BSL, subject to valid existing rights and to such other terms, conditions, reservations, and exceptions as may be agreed on by the Secretary of Agriculture and BSL fee title to the Forest System land;

(3) the Secretary shall grant to BSL timber harvest rights to approximately 20,000,000 board feet of timber in accordance with subsection (c) and as described in Exhibit C to the Option Agreement;

(4)(A) subject to the availability of funds, the Secretary of Agriculture shall purchase the portion of the BSL land in the Taylor Fork area depicted on Exhibit D to the Option Agreement at a purchase price of not more than $6,500,000; and

(B) to extent that funds are not available, the Secretary of Agriculture shall acquire the remaining Taylor Fork sections through an exchange of assets; and

(5) the Secretary of the Interior shall convey to BSL, by patent or otherwise, subject to valid existing rights and to such other terms, conditions, reservations, and exceptions as may be agreed to by the Secretary of the Interior and BSL, fee title to the BLM land.

(b) VALUATION.—The property and other assets exchanged by BSL and the United States under subsection (a) shall be approximately equal in value, as determined by the Secretary of Agriculture.

(c) TIMBER HARVEST RIGHTS.—

(1) IN GENERAL.—Not later than December 31 of the second full calendar year that begins after the date of enactment of this Act, the Secretary shall prepare, grant to BSL, and commence administration of the timber harvest rights identified in Exhibit C to the Option Agreement.

(2) GRANTS.—

(A) IN GENERAL.—The Secretary shall grant timber harvest rights to BSL not earlier than the date that is 45 days after the date on which the Secretary issues a decision notice to grant the timber harvest rights, or, if such a decision notice is appealed, after the date of final resolution of the appeal.

(B) LIMITATION.—The Secretary may not grant timber harvest rights that are the subject of administrative appeal or litigation.

(3) ADMINISTRATION.—After timber harvest rights are granted to BSL, the decision notice for those rights and the administration of those rights in accordance with the decision notice shall not be subject to administrative appeal or judicial review.

(4) SCHEDULES.—The Secretary and BSL shall mutually develop and agree on schedules for the harvest of timber the harvest rights to which are granted to BSL in the exchange.

(5) TIMBER SALE PROGRAM.—The timber harvest rights granted under this Act—

(A) shall constitute the timber sale program for the Gallatin National Forest for the period beginning on the date of enactment of this Act and ending on December 31 of the second full calendar year that begins after that date; and

(B) shall be funded by the Secretary annually at levels that are commensurate with the preparation and administration involved in the program.

(6) SUBSTITUTION.—If circumstances, such as natural catastrophe, administrative appeals or litigation, regulatory or legal limitations, or environmental or financial circumstances, prevent the Secretary from granting the timber harvest rights identified in Exhibit C to the Option Agreement, the Secretary shall replace the value of the diminished timber harvest rights by substituting equivalent timber harvest rights volume from the same market area.

(7) OPEN MARKET.—All timber harvest rights granted to BSL in the exchange under subsection (a) shall be offered for sale by BSL through the competitive bid process.

(8) SMALL BUSINESS.—All timber harvest rights granted to BSL in the exchange shall be subject to compliance by BSL with Forest Service small business program procedures in effect as of the date of enactment of this Act, including contractual provisions for payment schedules, harvest schedules, and bonds and including the right of the highest bidder among qualified small businesses that submit minimum bids to be awarded a timber contract.

(9) COMPLIANCE WITH OPTION AGREEMENT.—The Secretary and BSL shall comply with the terms and conditions of the Option Agreement, including terms and conditions with respect to timber harvest rights included in the exchange.

(d) RIGHTS-OF-WAY.—As part of the exchange under subsection (a)—

(1) the Secretary of Agriculture, under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), shall convey to BSL such easements in or other rights-of-way over Forest System land as may be agreed to by the Secretary of Agriculture and BSL; and

(2) BSL shall convey to the United States such easements in or other rights-of-way over land owned by BSL as may be agreed to by the Secretary of Agriculture and BSL.

(e) QUALITY OF TITLE.—

(1) DETERMINATION.—The Secretary of Agriculture shall review the title for the BSL land described in subsection (a) and, within 45 days after receipt of all applicable title documents from BSL, determine whether—

(A) the applicable title standards for Federal land acquisition have been satisfied or

the quality of the title is otherwise acceptable to the Secretary of Agriculture;

(B) all draft conveyances and closing documents have been received and approved;

(C) a current title commitment verifying compliance with applicable title standards has been issued to the Secretary; and

(D) the title includes both the surface and subsurface estates without reservation or exception (except by the United States or the State of Montana, by patent or as otherwise agreed to by the Secretary and BSL), including—

(i) minerals, mineral rights, and mineral interests (including severed oil and gas surface rights), subject to and excepting other outstanding or reserved oil and gas rights;

(ii) timber, timber rights, and timber interests, except those reserved subject to section 251.14 of title 36, Code of Federal Regulations, by BSL and agreed to by the Secretary;

(iii) water, water rights, ditch, and ditch rights; and

(iv) any other interest in the property.

(2) CONVEYANCE OF TITLE.—

(A) IN GENERAL.—If the quality of title does not meet Federal standards or is otherwise determined to be unacceptable to the Secretary of Agriculture, the Secretary shall advise BSL regarding corrective actions necessary to make an affirmative determination under paragraph (1).

(B) TITLE TO SUBSURFACE ESTATE.—Title to the subsurface estate shall be conveyed by BSL to the Secretary of Agriculture in the same form and content as that estate is received by BSL from Burlington Resources Oil & Gas Company Inc. and Glacier Park Company.

(f) TIMING OF IMPLEMENTATION.—

(1) LAND-FOR-LAND EXCHANGE.—The Secretary of Agriculture shall accept the conveyance of land described in subsection (a) not later than 45 days after the Secretary of Agriculture has made an affirmative determination of quality of title.

(2) LAND-FOR-TIMBER EXCHANGE.—The Secretary shall make the timber harvest rights described in subsection (a)(3) available not later than December 31 of the second full calendar year that begins after the date of enactment of this Act.

(3) PURCHASE.—The Secretary of Agriculture shall complete the purchase of BSL land under subsection (a)(4) not later than 30 days after the date on which appropriated funds are made available and an affirmative determination of quality of title is made with respect to the BSL land.

SEC. 5. GENERAL PROVISIONS.

(a) MINOR CORRECTIONS.—

(1) IN GENERAL.—The Option Agreement shall be subject to such minor corrections as may be agreed to by the Secretary of Agriculture and BSL.

(2) NOTIFICATION.—The Secretary shall notify the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and each member of the Montana congressional delegation of any changes made pursuant to this subsection.

(b) PUBLIC AVAILABILITY.—The Option Agreement—

(1) shall be on file and available for public inspection in the office of the Supervisor of the Gallatin National Forest; and

(2) shall be filed with the county clerk of each of Gallatin County, Park County, Madison County, Granite County, Broadwater County, Meagher County, Flathead County, and Missoula County, Montana.

(c) STATUS OF LAND.—All land conveyed to the United States under this Act shall be added to and administered as part of the Gallatin National Forest and Deerlodge National Forest, as appropriate, in accordance with the Act of March 1, 1911 (commonly known as the ''Weeks Act'') (36 Stat. 961, chapter 186), and other laws (including regulations) pertaining to the National Forest System.

(d) MANAGEMENT.—

(1) PUBLIC PROCESS.—Not later than 30 days after the date of completion of the land-for-land exchange under section 4(f)(1), the Secretary shall initiate a public process to amend the Gallatin National Forest Plan and the Deerlodge National Forest Plan to integrate the acquired BSL land into the plans.

(2) PROCESS TIME.—The amendment process under paragraph (1) shall be completed not later than 360 days after the date on which the amendment process is initiated.

(3) LIMITATION.—An amended management plan shall not permit surface occupancy on the BSL land for access to reserved or outstanding oil and gas rights or for exploration or development of oil and gas.

(4) INTERIM MANAGEMENT.—Pending completion of the forest plan amendment process under paragraph (1), the Secretary shall—

(A) manage the acquired BSL land under the same standards, guidelines, and management directions as adjacent land managed by the Forest Service; and

(B) maintain all existing public access to the acquired BSL land.

(e) RESTORATION.—

(1) IN GENERAL.—After acquiring the BSL land, the Secretary shall implement a restoration program including reforestation and watershed enhancements to bring the BSL land and surrounding national forest land into compliance with Forest Service standards and guidelines.

(2) STATE AND LOCAL CONSERVATION CORPS.—In implementing the restoration program, the Secretary shall, when practicable, use partnerships with State and local conservation corps, including the Montana Conservation Corps, under the Public Lands Corps Act of 1993 (16 U.S.C. 1721 et seq.).

(f) IMPLEMENTATION.—The Secretary of Agriculture shall ensure that sufficient funds are made available to the Gallatin National Forest to carry out this Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Mr. BURNS. Mr. President, I am pleased today to introduce with my colleague, Senator BAUCUS, the Gallatin Consolidation Act completion phase, know as Gallatin II (two). Our colleague, Congressman HILL, is introducing identical legislation today in the House.

The bill we have jointly introduced today is the result of much cooperation and communication among the citizens of the state of Montana, the Forest Service, the partners of Big Sky Lumber and the Montana Congressional Delegation. Ranchers, property owners, outfitters, environmentalists, county commissioners, sportsmens groups, wildlife associations and other groups have sat at the table attempting to find consensus on the difficult aspects of the exchange.

That process will continue. The introduction of this bill today does not end the public involvement. In fact, it just opens a different facet of public input. Committee hearings are next in line as we consider this legislation.

The lands the U.S. Forest Service will acquire under this act are some of the richest wildlife habitat areas in the state of Montana. Today the lands in the Gallatin National Forest are still held in a mostly checkerboard land-ownership pattern. Add into this mix a dramatic increase in residential development in rural areas near the National Forests and you have further complicated the resource problems for multiple use in our National Forests.

With this bill we are attempting to consolidate the National Forest System ownership pattern and preserve some of these corridors for wildlife, resource protection, and future generations who are fortunate enough to visit these forests.

I want to thank my colleagues, Congressman HILL and Senator BAUCUS for their participation and cooperation in formulating a delegation approach to this complex land exchange. I look forward to moving this bill forward in an efficient and timely manner so that the deadline for accomplishing the exchange can be met.

Thank you, Mr. President.

By Mr. HATCH (for himself, Mr. LEAHY, and Mr. KOHL):

S. 1720. A bill to amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes; to the Committee on the Judiciary.

THE COPYRIGHT COMPULSORY LICENSE IMPROVEMENT ACT OF 1998

Mr. HATCH. Mr. President, I rise to introduce a bill that will help provide for greater consumer choice and competition in television services, the Copyright Compulsory License Improvement Act of 1998. Joining me in introducing this bill are my colleagues Senators LEAHY and KOHL.

The options consumers have for viewing television entertainment have vastly increased since that fateful day in September 1927 when television inventor and Utah native Philo T. Farnsworth, together with his wife and colleagues, viewed the first television transmission in the Farnsworth's home workshop: a single black line rotated from vertical to horizontal. Both the forms of entertainment and the technologies for delivering that entertainment have proliferated over the 70 years since that day. In the 1940s and 50s, televisions began arriving in an increasing number of homes to pick up entertainment being broadcast into a growing number of cities and towns.

In the late 60s and early 70s, cable television began offering communities more television choices by initially providing community antenna system of receiving broadcast television signals, and later by offering new created-for-cable entertainment. The development of cable television made dramatic strides with the enactment of the cable compulsory license in 1976, providing an efficient way of clearing copyright rights for the retransmission of broadcast signals over cable systems.

In the 1980s, television viewers began to be able to receive television entertainment with their own home satellite equipment, and the enactment of the Satellite Home Viewer Act in 1988 helped develop a system of providing options for television service to Americans who lived in areas too remote to receive television signals over the air or via cable.

Much has changed since the original Satellite Home Viewer Act was adopted in 1988. The Satellite Home Viewer Act was originally intended to ensure that households that could not get television in any other way, traditionally provided through broadcast or cable, would be able to get television signals via satellite. The market and the satellite industry has changed substantially since 1988. Many of the difficulties and controversies associated with the satellite license have been at least partly a product of the satellite business attempting to move from a predominately need-based rural niche service to a full service video delivery competitor in all markets, urban and rural.

Now, many market advocates both in and out of Congress are looking to satellite carriers to compete directly with cable companies for viewership, because we believe that an increasingly competitive market is better for consumers both in terms of cost and the diversity of programming available. The bill I introduce today will move us toward that kind of robust competition.

The bill I introduce today is focused on changes that we can make this year to move the satellite television industry to the next level, making it a full competitor in the multi-channel video delivery market. It has been said time and again that a major, and perhaps the biggest, impediment to satellite's ability to be a strong competitor to cable is its current inability to provide local broadcast signals. (See, e.g., Business Week (22 Dec. 1997) p. 84.) This problem has been partly technological and partly legal. Today, with this bill, we hope to begin removing the legal impediments to use of the emerging technology that will make local retransmission of broadcast signals a reality.

This is a forward-looking bill which will create an incentive for companies to develop the means by which to provide local programming to local markets over satellite systems. In the next few years, if we make these legal changes, the satellite industry should be able to offer television viewers their own local programming of news, weather, sports, and entertainment, with digital quality picture and sound. This will mean that viewers in the remoter areas of my large home state of Utah will be able to watch television programming originating in Salt Lake City, rather than New York or California. Utahns in remote areas will have access to local weather and other locally and regionally relevant information. And, most important to all the constituents of my colleagues is that they will finally have a choice for full service multi-channel video programming: They will be able to choose cable or one of a number of satellite carriers. This should foster an environment of proliferating choice and lowered prices, all to the benefit of consumers, our constituents.

To that end, the ''Copyright Compulsory License Improvement Act'' makes the following changes to the Satellite Home Viewers Act:

It makes the satellite compulsory license permanent, just like the cable compulsory license. Under the current law the satellite license will sunset next year.

It allows satellite carriers to retransmit a local television station to households within that station's local market, just like cable does, and sets a zero copyright rate for providing this service.

It allows consumers to switch from cable to satellite service for network signals without the waiting period now required in the law.

It reforms the current structure of the administrative body which determines rates and distributions applicable to all copyright compulsory licenses to make it more efficient and less expensive for the parties, as well as more technically expert.

It creates substantial regulatory parity between the industries, including must-carry rules, retransmission consent requirements, network non-duplication, syndicated exclusivity, and sports blackout restrictions. These regulations will be phased in over a period of time in which the Federal Communications Commission can carefully consider and tailor their implementation. During that time, the portions of the satellite compulsory license which determine who is eligible to receive network and superstation signals from satellite carriers will continue to apply as they do now.

Mr. President, this is a forward-looking bill that establishes the environment in which there can be more vigorous and fair competition in the video delivery market. But it is constructed to be practical in the realm of achievable legislation. Let me make clear that this bill is carefully balanced to ensure competition. It will do much to put the satellite industry on a more equal footing with its competitors and other market actors, both in terms of its benefits and responsibilities.

Mr. President, let me briefly mention an issue that I think is important to touch on briefly at introduction. I am aware that there is currently controversy and even litigation over some issues relating to compliance with restrictions in the law as it is now written regarding satellite carriers providing network service. Let me make it clear that the introduction of this bill is but the beginning of a process. I would hope that this beginning is not interpreted by anyone as a license to disregard the law as it is now constituted in hopes of any future changes in the law. Our debates and discussions need to be fair and frank, and that process is not helped by abuse or disregard for current law. I would expect full compliance with and application of current law regarding the restrictions on eligibility for distant network signals or any other provisions in current law until such time as changes in the law are actually made.

Having said that, I welcome and urge my colleagues and all interested parties to join in a constructive discussion of this very important legislation. I recognize that we may be able improve this bill before final passage, but I believe the essential balance of this bill is necessary to making it achievable now. I commend it to my colleagues for their consideration and look forward to working with them to help hasten more vigorous competition in the television delivery market and the ever-widening consumer choice that will follow it.

I ask unanimous consent that the bill and an explanatory section-by-section analysis be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 1720

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 ''Copyright Compulsory License Improvement Act''.

SEC. 2. SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.

Section 119 of title 17, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 119. Limitations on exclusive rights: Secondary transmissions by satellite carriers''; and

(2) by striking subsection (a) and inserting the following:

''(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS FOR PRIVATE HOME VIEWING.—

''(1) SECONDARY TRANSMISSIONS OF DISTANT AND LOCAL BROADCAST SIGNALS SUBJECT TO STATUTORY LICENSING.—Subject to the provisions of subsections (b) and (c) of this section and section 114(d), a secondary transmission of a primary transmission made by a television broadcast station licensed by the Federal Communications Commission or by the Public Broadcasting Service satellite feed and embodying a performance or display of a work shall be subject to statutory licensing under this section if—

''(A) the secondary transmission is permissible under the rules, regulations, and authorizations of the Federal Communications Commission and is made by a satellite carrier to the public for private home viewing; and

''(B) the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

''(2) SUBMISSION OF SUBSCRIBER LISTS TO TELEVISION BROADCAST STATIONS.—

''(A) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary

transmission of a television broadcast station pursuant to paragraph (1) shall, within 90 days after commencing such secondary transmissions, submit to that television broadcast station—

''(i) a list identifying all subscribers within the designated market area of that television broadcast station to whom the satellite carrier has made such secondary transmissions; and

''(ii) a list of all television broadcast stations whose primary transmissions have been transmitted by the satellite carrier to those subscribers during that 90-day period.

''(B) SUBSEQUENT LISTS.—After the submission of the lists under subparagraph (A), the satellite carrier shall, on the 15th day of each month, submit to each television broadcast station—

''(i) a list, which shall be dated, that identifies the name of any subscriber described in subparagraph (A) who has been added or dropped since the last submission under this paragraph; and

''(ii) a list of all television broadcast stations whose primary transmissions have been added or dropped by the satellite carrier since the last submission under this paragraph

''(C) IDENTIFYING INFORMATION.—(i) Each list of subscribers under this paragraph shall include the name of each subscriber, together with the subscriber's home address, which shall include the street address or rural route as the case may be, city, county, State, and zip code and, if different from the subscriber's home address, the location of the subscriber's satellite receiving dish to which the secondary transmissions are made, identified by street address or rural route as the case may be, city, county, State, and zip code.

''(ii) Each list of television broadcast stations under this paragraph shall include the station's call letters and community of license.

''(iii) Subscriber information submitted under this paragraph may be used only for purposes of monitoring compliance by the satellite carrier with this section.

''(3) PENALTIES FOR NONCOMPLIANCE WITH ACCOUNTING AND ROYALTY REQUIREMENTS.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station licensed by the Federal Communications Commission or by the Public Broadcasting Service satellite feed and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier has not deposited the statement of account and royalties fees required by subsection (b), or has failed to make the submissions to networks required by paragraph (2).

''(4) PENALTIES FOR WILLFUL ALTERATIONS OF PROGRAMMING.—Notwithstanding the provisions of paragraph (1), the secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station licensed by the Federal Communications Commission or by the Public Broadcasting Service satellite feed and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by section 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

''(5) PENALTIES FOR DISCRIMINATION AGAINST DISTRIBUTOR.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station licensed by the Federal Communications Commission or by the Public Broadcasting Service satellite feed and embodying the performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

''(6) LICENSE LIMITED TO SECONDARY TRANSMISSIONS TO HOUSEHOLDS IN THE UNITED STATES.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.''.

SEC. 3. STATUTORY LICENSE FOR SATELLITE CARRIERS.

Section 119 of title 17, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

''(1) DEPOSIT OF ACCOUNTS AND FEES WITH REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

''(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all television broadcast stations whose signals were retransmitted, and listing the Public Broadcasting Service satellite feed, if carried, at any time during that period, to subscribers for private home viewing, the total number of subscribers that received such retransmissions, and other such data as the Register of Copyrights may from time to time prescribe by regulation; and

''(B) a royalty fee for that 6-month period for each television broadcast station whose primary transmission was retransmitted beyond the local market of the station, and for the Public Broadcasting Service satellite feed, if carried, computed by multiplying the total number of subscribers receiving the secondary transmission, and the number of subscribers receiving a secondary transmission of the Public Broadcasting Service satellite feed, during each calendar month by the rate in effect for television broadcast stations as determined under chapter 8 of this title and section 8(c) of the Copyright Compulsory License Improvement Act.

''(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Copyright Royalty Adjudication Board as provided in this title. The Register may, four or more years after the close of any calendar year, close out the account for royalty payments made under this section for that calendar year (including payments made under this section as in effect before the effective date of the Copyright Compulsory License Improvement Act), and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the calendar year in which the account is closed.

''(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided in paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Board under paragraph (4).

''(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

''(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Adjudication Board, in accordance with requirements that the Board shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

''(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Adjudication Board shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Board determines that no such controversy exists, the Board shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Board finds the existence of a controversy, the Board shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

''(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Adjudication Board shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy. The action of the Board to distribute royalty fees may precede the declaration of a controversy if all parties to the proceeding file a petition with the Board requesting such distribution, except that such amount may not exceed 50 percent of the amounts on hand at the time of the request.''.

SEC. 4. DEFINITIONS.

Section 119 of title 17, United States Code, is amended by striking subsection (d) and inserting the following:

''(d) DEFINITIONS.—As used in this section—

''(1) DESIGNATED MARKET AREA.—The term 'designated market area' has the meaning given that term in section 337(g) of the Communications Act of 1934.

''(2) DISTRIBUTOR.—The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

''(3) LOCAL MARKET.—The 'local market' for a television broadcast station has the meaning given that term in section 337(g) of the Communications Act of 1934.

''(4) PRIMARY TRANSMISSION.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title.

''(5) PRIVATE HOME VIEWING.—The term 'private home viewing' means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission or of the Public Broadcasting Service satellite feed.

''(6) PUBLIC BROADCASTING SERVICE SATELLITE FEED.—The term 'Public Broadcasting Service satellite feed' means the national satellite feed distributed by the Public Broadcasting Service (other than the transmissions that may not be encrypted under section 705(c) of the Communications Act of 1934), consisting of educational and informational programming intended for private home viewing, to which the Public Broadcasting Service holds national terrestrial broadcast rights.

''(7) SATELLITE CARRIER.—The term 'satellite carrier' means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, and operates in the Fixed-Satellite Service under part 25 of title 47, Code of Federal Regulations (as in effect on February 1, 1998), or the Direct Broadcast Satellite Service under part 100 of title 47, Code of Federal Regulations (as in effect on February 1, 1998), to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

''(8) SECONDARY TRANSMISSION.—The term 'secondary transmission' means the further transmitting of a primary transmission simultaneously with the primary transmission.

''(9) SUBSCRIBER.—The term 'subscriber' means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

''(10) TELEVISION BROADCAST STATION.—The term 'television broadcast station' means an over-the-air, commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations.''.

SEC. 5. EXCLUSIVITY OF SECTION 119 OF TITLE 17, UNITED STATES CODE.

Section 119 of title 17, United States Code, is amended by adding at the end the following:

''(e) EXCLUSIVITY FOR THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF TELEVISION STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers for private home viewing of programming contained in a primary transmission may be made without obtaining the consent of the copyright owner.''.

SEC. 6. CONFORMING AMENDMENT.

The table of contents for chapter 1 of title 17, United States Code, is amended by striking the item relating to section 119 and inserting the following:

''119. Limitations on exclusive rights: Secondary transmissions by satellite carriers.''.

SEC. 7. COPYRIGHT ROYALTY ADJUDICATION BOARD.

(a) ESTABLISHMENT AND FUNCTIONS.—Chapter 8 of title 17, United States Code, is amended to read as follows:

''CHAPTER 8—COPYRIGHT ROYALTY ADJUDICATION BOARD

''Sec.
''801. Copyright Royalty Adjudication Board: establishment.
''802. Membership and qualifications of the Board.
''803. Selection of administrative copyright judges.
''804. Independence of the Board.
''805. Removal and sanction of administrative copyright judges.
''806. Functions.
''807. Factors for determining royalty fees.
''808. Institution of proceedings.
''809. Conduct of proceedings.
''810. Judicial review.
''811. Administrative matters.
''812. Rule of construction.

''§ 801. Copyright Royalty Adjudication Board: establishment

''There is hereby established within the Copyright Office the Copyright Royalty Adjudication Board (hereinafter referred to in this chapter as the 'Board').

''§ 802. Membership and qualifications of the Board

''(a) MEMBERSHIP.—

''(1) IN GENERAL.—The Board shall consist of 1 full-time chief administrative copyright judge, and such part-time administrative copyright judges as the Librarian of Congress, upon the recommendation of the Register of Copyrights, finds necessary to conduct the business of the Board in a timely manner. At no time shall the number of authorized administrative copyright judges be less than 3 or more than 5.

''(2) PART-TIME ADMINISTRATIVE COPYRIGHT JUDGES.—Chapter 34 of title 5 shall not apply to a part-time administrative copyright judge. For purposes of this subsection the Librarian of Congress shall promulgate regulations relating to part-time employment of administrative copyright judges.

''(b) QUALIFICATIONS.—

''(1) CHIEF ADMINISTRATIVE COPYRIGHT JUDGE.—The chief administrative copyright judge shall be an attorney with 10 or more years of legal practice with demonstrated experience in administrative hearings or court trials and demonstrated knowledge of copyright law.

''(2) OTHER ADMINISTRATIVE COPYRIGHT JUDGES.—Each administrative copyright judge, other than the chief administrative copyright judge, shall be an individual with expertise in the business and economics of industries affected by the actions taken by the Board to carry out its functions.

''(c) TERMS.—(1) The term of each administrative copyright judge (including the chief administrative copyright judge) shall be 5 years, except that, of the first administrative copyright judges appointed, the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall appoint all but one of them to lesser terms to establish a staggering of terms such that in any calendar year no more than one term is due to expire.

''(2) The term of each administrative copyright judge (including the chief administrative copyright judge) shall begin when the term of the predecessor of that member ends. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is selected.

''(d) COMPENSATION.—The compensation of the administrative copyright judges shall be governed solely by the provisions of section 5376 of title 5 and such regulations as the Librarian of Congress may adopt that are not inconsistent with that section. The compensation of the administrative copyright judges shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

''§ 803. Selection of administrative copyright judges

''(a) SELECTION.—(1) The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall select the administrative copyright judges (including the chief administrative copyright judge) among individuals found qualified under section 802(b) who meet the financial conflict of interest under section 805(a). Notwithstanding any other provision of law and at the discretion of the Librarian, the Librarian shall determine the method of selecting the members.

''(2) Administrative copyright judges previously selected by the Librarian of Congress may be selected to serve additional terms. There shall be no limit on the number of terms any individual may serve.

''(b) EFFECT OF VACANCY.—In no event shall a vacancy in the Board impair the right of the remaining administrative copyright judges to exercise all of the powers of the Board.

''§ 804. Independence of the Board

''(a) IN GENERAL.—The Board shall have independence in reaching its determinations concerning the adjustment of copyright royalty rates, the distribution of copyright royalties, the acceptance or rejection of royalty claims and rate adjustment petitions, and such rulemaking functions as are delegated to it under this title.

''(b) PERFORMANCE APPRAISALS.—Notwithstanding any other provision of law or any regulation of the Library of Congress, no administrative copyright judge shall receive an annual performance appraisal.

''(c) INCONSISTENT DUTIES BARRED.—No administrative copyright judge may be assigned duties inconsistent with his or her duties and responsibilities as a administrative copyright judge.

''§ 805. Removal and sanction of administrative copyright judges

''(a) STANDARDS OF CONDUCT.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the administrative copyright judges and the proceedings under this chapter.

''(b) REMOVAL OR SANCTION.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, may remove or sanction an administrative copyright judge for violation of the standards of conduct adopted under subsection (a), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such removal or sanction may be made only after notice and opportunity for hearing, but the Librarian of Congress, upon the recommendation of the Register of Copyrights, may suspend the administrative copyright judge during the pendency of such hearing.

''§ 806. Functions

''Subject to the provisions of this chapter, the functions of the Board shall be—

''(1) to make determinations concerning the adjustment of reasonable copyright royalty rates for—

''(A) secondary transmissions to the public by a cable system of a primary transmission as provided in section 111;

''(B) the making and distributing of phonorecords by means other than digital phonorecord delivery, as provided in section 115;

''(C) secondary transmissions to the public by a satellite carrier of a primary transmission made by a television broadcast station and the Public Broadcasting Service satellite feed as provided in section 119; and

''(D) each digital audio recording device imported into and distributed in the United States or manufactured and distributed into the United States as provided in section 1004;

''(2) to make determinations as to reasonable rates and terms of royalty payments for—

''(A) the public performance of a sound recording by means of a digital audio transmission as provided in section 114;

''(B) the making and distribution of phonorecords by means of a digital phonorecord delivery as provided in section 115;

''(C) the public performance of nondramatic musical works by means of coin-operated phonorecord players as provided in section 116; and

''(D) the use of nondramatic musical works and pictorial, graphic, and sculptural works by public broadcasting entities as provided in section 118;

''(3) to accept or reject royalty claims filed under sections 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim;

''(4) to determine, in cases where controversy exists, the distribution of royalty fees deposited with the Register of Copyrights under sections 111, 119, and 1003;

''(5) to determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010; and

''(6) to engage in such rulemaking as is expressly provided in sections 111, 114, 115, 118, and 119.

''§ 807. Factors for determining royalty fees

''(a) FOR CABLE RATES.—The rates applicable under section 111 shall be calculated solely in accordance with the following provisions:

''(1) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

''(A) national monetary inflation or deflation, or

''(B) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of October 19, 1976, except that—

''(i) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

''(ii) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

The Board may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor, whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

''(2) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcasting signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Board shall consider, among other factors, the economic impact on copyright owners and users, except that no adjustment in royalty rates shall be made under this paragraph with respect to any distant signal equivalent or fraction thereof represented by—

''(A) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or

''(B) a television broadcast signal first carried after April 15 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

''(3) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sport program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

''(4) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

''(b) FOR RATES OTHER THAN CABLE OR SATELLITE CARRIERS.—The rates applicable under sections 114, 115, and 116 shall be calculated to achieve the following objectives:

''(1) To maximize the availability of creative works to the public.

''(2) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

''(3) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communications.

''(4) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

''(c) FOR RATES FOR NONCOMMERCIAL BROADCASTING.—The rates applicable under section 118 shall be calculated to achieve reasonable rates. In determining reasonable rates, the Board shall base its decision so as to—

''(1) assure a fair return to copyright owners;

''(2) encourage the growth and development of public broadcasting; and

''(3) encourage musical and artistic creation.

''(d) RATES FOR SATELLITE CARRIERS.—The rates applicable under section 119 shall be calculated to represent most clearly the fair market value of secondary transmissions. In determining the fair market value, the Board shall base its decision on economic, competitive, and programming information presented by the parties, including—

''(1) the competitive environment in which such programming is distributed, the cost for similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

''(2) the economic impact of such fees on copyright owners and satellite carriers; and

''(3) the impact on the continued availability of secondary transmissions to the public.

''§ 808. Institution of proceedings

''(a) PETITION REQUIRED TO INSTITUTE PROCEEDINGS.—With respect to proceedings concerning the adjustment of royalty rates as provided in sections 111, 114, 115, 116, and 119, during the calendar years or under the circumstances specified in the schedule set forth in subsection (c), any owner or user of a copyrighted work whose royalty rates are to be established or adjusted by the Board may file a petition with the Board declaring that the petitioner requests an adjustment of the rate. The Board shall make a determination as to whether the petitioner has a significant interest in the royalty rate in which an adjustment is requested. If the Board determines that the petitioner has a significant interest, the Board shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings concerning the adjustment of royalty rates under section 1004, any interested copyright party may petition the Board as provided in that section.

''(b) PETITION NOT REQUIRED TO INSTITUTE PROCEEDINGS.—With respect to proceedings concerning the adjustment of royalty rates as provided in section 118 and the distribution of royalties as provided in section 111, 119, and 1007, no petition is required to institute proceedings. All proceedings concerning the adjustment of rates under section 118 shall commence as provided in section 118(c) of this title. All proceedings concerning the distribution of royalties under section 111, 119, or 1007 shall commence as provided in such sections and in subsection (c)(8) of this section.

''(c) SCHEDULE OF PROCEEDINGS.—

''(1) SECTION 111 PROCEEDINGS.—In proceedings concerning the adjustment of royalty rates as provided in section 111, a petition described in subsection (a) may be filed during the year 2000 and in each subsequent fifth calendar year, except that in the event that the rules and regulations of the Federal Communications Commission are amended with respect to distant signal importation, or to syndicated and sports program exclusivity, any owner or user of a copyrighted work subject to the royalty rates established or adjusted pursuant to section 111 may, within 12 months after such amendments take effect, file a petition with the Board to institute proceedings to insure that the rates are reasonable in light of the changes to such rules and regulations. Any such adjustments shall apply only to the affected television broadcast signals carried on those systems affected by the change. Any change in royalty rates made pursuant to this subsection may be reconsidered in the year 2000, and each fifth calendar year thereafter, as the case may be.

''(2) SECTION 114 PROCEEDINGS.—In proceedings concerning the adjustment of royalty rates and terms as provided in section 114, the Board shall proceed when and as provided by that section.

''(3) SECTION 115 PROCEEDINGS.—In proceedings concerning the adjustment of royalty rates and terms as provided in section 115, a petition described in subsection (a) may be filed in the year 2007 and in each subsequent tenth calendar year or as prescribed in section 115(c)(3).

''(4) SECTION 116 PROCEEDINGS.—(A) In proceedings concerning the adjustment of royalty rates as provided in section 116, a petition described in subsection (a) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire or are not replaced by subsequent agreements.

''(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Board, upon petition filed under subsection (a) within 1 year after such termination or expiration, shall promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of the proceedings to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

''(5) SECTION 118 PROCEEDINGS.—In proceedings concerning the adjustment of royalty rates and terms as provided in section 118, the Board shall proceed when and as provided by that section.

''(6) SECTION 119 PROCEEDINGS.—In proceedings concerning the adjustment of royalty rates governing secondary transmissions of as provided in section 119, a petition described in subsection (a) may be filed during the year 2001 and in each subsequent fifth calendar year.

''(7) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—In proceedings concerning the distribution of royalty fees under section 111, 119, or 1007, the Board shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

''§ 809. Conduct of proceedings

''(a) BOARD PROCEEDINGS.—The Board shall, for the purposes of making its determinations in carrying out the functions set forth in section 806, conduct proceedings subject to subchapter II of chapter 5 of title 5.

''(b) PROCEDURES.—Subject to the approval of the Register of Copyrights, the Board, shall adopt regulations to govern the conduct of the proceedings of the Board. The regulations shall include, but not be limited to, provisions for—

''(1) public access to and inspection of the records of the Board pursuant to section 706;

''(2) the right of the public to attend the proceedings of the Board;

''(3) the procedures to apply when formal hearings are conducted; and

''(4) the procedures to apply and the basis upon which distribution or royalty controversies may be decided on the basis of written pleadings.

''(c) PARTICIPATION OF COPYRIGHT OFFICE.—During the conduct of proceedings, the Register of Copyrights may file formally with the Board the position of the Copyright Office on any matter before the Board. Such filings shall be served on all parties to the proceeding. The Board may accept or reject the position of the Copyright Office.

''(d) MAJORITY RULE.—The Board shall act in all procedural and substantive matters on the basis of majority rule.

''(e) NUMBER OF PRESIDING JUDGES.—The Board shall decide, in its discretion, whether 1 or 3 administrative copyright judges shall preside in a royalty distribution or rate adjustment proceeding. In no event shall the number of presiding administrative copyright judges be more than 3.

''(f) PARTICIPATION OF PARTIES.—Any copyright owner who has filed an acceptable claim claiming entitlement to the distribution of royalties, or any copyright owner or user who would be affected by a royalty rate to be established or adjusted by the Board, may submit relevant information and proposals to the Board in proceedings applicable to the interest of the copyright owner or user.

''(g) TIME LIMITS FOR INITIAL DECISION.—Proceedings under section 118 operate under the time limits established in that section. For all other proceedings, if 1 administrative copyright judge is presiding in a proceeding, the Board shall issue its initial decision to the parties to the proceeding and the Register of Copyrights within 6 months after the declaration of a controversy in the proceeding. If more than 1 administrative copyright judge is presiding in a proceeding, the Board shall issue its initial decision to the parties to the proceeding and the Register of Copyrights within 1 year after the declaration of a controversy in the proceeding.

''(h) REQUIREMENTS FOR INITIAL DECISIONS.—The initial decision under subsection (g) shall include a statement of findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record. The initial decision shall take into account prior decisions of the Copyright Royalty Tribunal, prior decisions of copyright arbitration royalty panels, as adopted or modified by the Librarian of Congress, and the procedural and evidentiary rulings the Librarian of Congress made that were applicable to the proceedings of the copyright arbitration royalty panels. Notwithstanding any provision of section 603 or 604 of title 5, neither the initial decision nor the final decision is required to include a regulatory flexibility analysis.

''(i) PETITIONS FOR RECONSIDERATION AND FINAL AGENCY ACTION.—Any party to the proceeding concerned or the Register of Copyrights may petition the Board to reconsider its initial decision in the proceeding. If there are no petitions for reconsideration, the initial decision becomes the final decision of the Board without further proceedings. If there are petitions for reconsideration, the Board shall issue a final decision to the parties to the proceeding and the Register of Copyrights which shall constitute final agency action. The time period by which parties to the proceeding or the Register of Copyrights may file a petition for reconsideration and the time period by which the Board shall render its final decision shall be established by regulation by the Board, subject to the approval of the Register of Copyrights.

''§ 810. Judicial review

''(a) APPEALS.—Within 1 week after the Board issues a final decision under section 809, or, if there are no petitions for reconsideration, within 1 week after the time the initial decision of the Board under section 809 becomes the final decision, the Board shall cause to be published in the Federal Register the decision of the rate adjustment or the royalty distribution, as the case may be. Any aggrieved party who would be bound by the final decision may appeal the decision to the United States Court of Appeals for the Federal Circuit within 30 days after the publication of the decision in the Federal Register. In any appeal to which the Board is a party, the chief administrative copyright judge shall refer the conduct of the litigation in defense of the Board's decision to the Department of Justice which shall have the authority to represent the Board under section 516 of title 28. If no appeal is brought within such 30-day period, the decision of the Board is final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in the decision. The pendency of an appeal under this subsection shall not relieve persons who would be affected by the determinations on appeal under section 111, 114, 115, 116, 118, 119, or 1003, of the obligation to deposit the statement of account or to pay royalty fees specified in those sections.

''(b) REVIEW SUBJECT TO CHAPTER 7 OF TITLE 5.—The judicial review of the Board's final decision shall be had, in accordance with chapter 7 of title 5, on the basis of the record before the Board.

''§ 811. Administrative matters

''(a) ADMINISTRATIVE SUPPORT.—The Library of Congress, upon the recommendation of the Register of Copyrights, shall provide the Board with the necessary administrative services and personnel related to proceedings under this title.

''(b) AUTHORITY TO PUBLISH IN FEDERAL REGISTER.—The actions of the Board which may be published in the Federal Register by and under the authority of the Board include—

''(1) actions of the Board required to be published in the Federal Register under this title;

''(2) actions of the Board required to be published in the Federal Register under regulations adopted by the Board upon the approval of the Register of Copyrights; and

''(3) regulations of the Board required to be published in the Federal Register to which the Board has been delegated the exclusive right to adopt.

''(c) COLLECTION AND USE OF FEES.—

''(1) DEDUCTION OF COSTS FROM FEES.—The Librarian of Congress and the Register of Copyrights may, to the extent not otherwise provided under this title, deduct from the royalty fees deposited or fees collected under this title the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright owner.

''(2) COLLECTION OF FEES.—The Register of Copyrights may impose and collect fees in advance to carry out the ratemaking proceedings. All fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office. Such fees that are collected shall remain available until expended. The Register may refund any sum paid by mistake or in excess of the fee required under this section.

''(d) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act of 1994 shall not apply to the members of the Board, employee positions in the Board, or employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 114, 115, 116, 118, or 119 or chapter 10.

''(e) BUDGET.—In each annual request for appropriations, the Register of Copyrights shall identify the portion thereof intended for the support of the Board and a statement

which shall include an assessment of the budgetary needs of the Board.

''(f) ANNUAL REPORT.—The Board shall prepare an annual report of its work and accomplishments during each fiscal year, which the Register of Copyrights shall include in the annual report required under section 701(c).

''§ 812. Rule of construction

''Nothing in this chapter shall be construed to affect the authority of the Register of Copyrights to establish regulations under sections 701 and 702.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CHAPTERS.—The item relating to chapter 8 in the table of chapters for title 17, United States Code, is amended to read as follows:

''8. Copyright Royalty Adjudication Board ..... 801''.

(2) JURISDICTION OF FEDERAL CIRCUIT.—Section 1295(a) of title 28, United States Code, is amended—

(A) in paragraph (13) by striking ''and'' after the semicolon;

(B) in paragraph (14) by striking the period and inserting a semicolon and ''and ''; and

(C) by adding at the end the following new paragraph:

''(15) of an appeal from a final decision of the Copyright Royalty Adjudication Board under sections 809(i) and 810 of title 17.''.

SEC. 8. TRANSITION PROVISIONS.

(a) TRANSITIONAL PROCEDURES.—During the period beginning on the date of the enactment of this Act and ending on the effective date of this Act, the Register of Copyrights shall adopt regulations to govern proceedings under chapter 8 of title 17, United States Code, as amended by section 7 of this Act. Such regulations shall remain in effect unless and until the Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights, adopts supplemental or superseding regulations pursuant to section 809(b) of title 17, United States Code.

(b) PROCEEDINGS IN PROGRESS.—

(1) COPYRIGHT ARBITRATION ROYALTY PANEL PROCEEDINGS.—Unless the Register of Copyrights, for good cause, finds otherwise, proceedings in which a copyright arbitration royalty panel has been convened by the Librarian of Congress under chapter 8 of title 17, United States Code, as in effect before the effective date of this Act, shall continue in effect and shall be governed under chapter 8 of such title, and applicable regulations, as in effect prior to such effective date, and proceedings in which a copyright arbitration royalty panel has not been convened by the Librarian of Congress under chapter 8 of title 17, United States Code, before the effective date of this Act shall be suspended and recommenced under the amendments made by section 7.

(2) CONTINUED PROCEEDINGS.—For those proceedings continued under paragraph (1), the functions of the Librarian of Congress and the Register of Copyrights relating to the report of the copyright arbitration royalty panel under title 17, United States Code, as in effect before the effective date of this Act, may, in the Librarian's discretion, upon the recommendation of the Register of Copyrights, be delegated to the Copyright Royalty Adjudication Board, when constituted.

(3) APPEALS.—In any appeal of a decision of the Librarian of Congress adopting or rejecting a determination of a copyright arbitration royalty panel which is pending in the United States Court of Appeals for the District of Columbia Circuit on or after the effective date of this Act, if such case is remanded by the court, the Librarian of Congress shall not reconvene the copyright arbitration royalty panel which rendered the determination, but shall direct the Copyright Royalty Adjudication Board, when constituted, to conduct proceedings in accordance with the directions of the court. If the case is remanded by the court after the enactment date of this Act but before the effective date of this Act, the Librarian of Congress shall have the discretion to reconvene the copyright arbitration royalty panel which rendered the determination, or direct the Copyright Royalty Adjudication Board when constituted, to conduct proceedings in accordance with the directions of the court.

(c) EFFECTIVENESS OF EXISTING RATES AND DISTRIBUTIONS.—All royalty rates and all determinations with respect to the proportionate division of compulsory license fees among copyright claimants, whether made by the Copyright Royalty Tribunal, copyright arbitration royalty panels, or by voluntary agreement, before the effective date of this Act, shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

(d) TRANSFER OF APPROPRIATIONS.—All unexpended balances of appropriations made by the Copyright Office for the support of the copyright arbitration royalty panels, as of the effective date of this Act, are transferred on such effective date to the support of the Copyright Royalty Arbitration Board for the purposes for which such appropriations were made except that, in the event that any copyright arbitration royalty panels continue to operate after the effective date of this Act, the Register of Copyrights shall retain such portions of the unexpended balances of appropriations as are necessary to support the continuing copyright arbitration royalty panels.

SEC. 9. AMENDMENTS TO OTHER PROVISIONS OF TITLE 17, UNITED STATES CODE.

(a) SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—Section 111(d) of title 17, United States Code, is amended—

(1) in paragraph (2) in the last sentence by striking ''Librarian of Congress'' and all that follows through the end of the sentence and inserting the following: ''Copyright Royalty Adjudication Board as provided in this title. The Register of Copyrights may, 4 or more years after the close of any calendar year, close out the account for royalty payments made for that calendar year, and may treat any funds remaining the such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.''; and

(2) in paragraph (4)—

(A) in subparagraph (A)—

(i) by striking ''Librarian of Congress'' the first place it appears and inserting ''Copyright Royalty Adjudication Board''; and

(ii) by striking ''Librarian of Congress'' the second place it appears and inserting ''Board'';

(B) in subparagraph (B)—

(i) by striking ''Librarian of Congress shall, upon the recommendation of the Register of Copyrights'' and inserting ''Copyright Royalty Adjudication Board shall'';

(ii) by striking ''Librarian'' each subsequent place it appears and inserting ''Board''; and

(iii) in the last sentence by striking ''convene a copyright royalty arbitration panel'' and inserting ''conduct a proceeding''; and

(C) in subparagraph (C)—

(i) by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Adjudication Board''; and

(ii) by adding at the end the following: ''The action of the Board to distribute royalty fees may precede the declaration of a controversy if all parties to the proceeding file a petition with the Board requesting such distribution, except that such amount may not exceed 50 percent of the amounts on hand at the time of the request.''.

(b) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114(f) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) by amending the first sentence to read as follows: ''During the first week of January, 2000, the Copyright Royalty Adjudication Board shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining or adjusting reasonable terms and rates of royalty payments for the activities specified in subsection (d)(2) of this section.''; and

(B) in the third sentence by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Adjudication Board'';

(2) by striking paragraphs (2), (3), and (4) and inserting the following:

''(2) In the absence of license agreements negotiated under paragraph (1), during the 60-day period beginning 6 months after publication of the notice specified in paragraph (1), and upon the filing of a petition in accordance with section 808(a), the Copyright Royalty Adjudication Board shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms. In addition to the objectives set forth in section 807(a) in establishing or adjusting such rates and terms, the Board may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated as provided in paragraph (1). The Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights, shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.

''(3) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more entities performing sound recordings shall be given effect in lieu of any determination by the Copyright Royalty Adjudication Board.

''(4) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in paragraph (1) and the procedures specified in paragraph (2) shall be repeated, in accordance with regulations that the Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights, shall prescribe—

''(A) no later than 30 days after a petition is filed by any copyright owners of sound recordings or any entities performing sound recordings affected by this section indicating that a new type of digital audio transmission service on which sound recordings are performed is or is about to become operational; and

''(B) during the first week of January 2005 and at 5-year intervals thereafter.''; and

(3) in paragraph (5)(A)(i) by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights,''.

(c) COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS.—Section 115(c)(3) of title 17, United States Code, is amended—

(1) in subparagraph (C)—

(A) by amending the first sentence to read as follows: ''At the times established in subparagraph (F), the Copyright Royalty Adjudication Board shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings

for the purpose of determining reasonable terms and rates of royalty payments for the activities specified in subparagraph (A) until the effective date of any new terms and rates established pursuant to this subparagraph or subparagraph (D) or (F), or such other date (regarding digital phonorecord deliveries) as the parties may agree.'';

(B) in the third sentence by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Adjudication Board'';

(2) by amending subparagraph (D) to read as follows:

''(D) In the absence of license agreements negotiated under subparagraphs (B) and (C), upon the filing of a petition in accordance with section 808(a), the Copyright Royalty Adjudication Board shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms. Such rates and terms shall distinguish between—

''(i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitute the digital phonorecord delivery, and

''(ii) digital phonorecord deliveries in general.

In addition to the objectives set forth in section 807(a), in establishing or adjusting rates and terms, the Board may consider rates and terms under voluntary license agreements negotiated as provided in subparagraphs (B) and (C). The Board, upon the approval of the Register of Copyrights, shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept and made available by persons making digital phonorecord deliveries.'';

(3) in subparagraph (E)(i) in the first sentence by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Adjudication Board''; and

(4) in subparagraph (F) by striking ''Librarian of Congress'' and inserting '' Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights,''.

(d) NEGOTIATED LICENSES FOR PUBLIC PERFORMANCES BY MEANS OF COIN-OPERATED PHONORECORD PLAYERS.—Section 116 of title 17, United States Code, is amended—

(1) by amending subsection (b)(2) to read as follows:

''(2) RATE ADJUSTMENT PROCEEDING.—Parties not subject to such a negotiation may determine, by a rate adjustment proceeding in accordance with the provisions of chapter 8, the terms and rates and the division of fees described in paragraph (1).''; and

(2) in subsection (c)—

(A) in the subsection heading by striking ''COPYRIGHT ROYALTY ARBITRATION PANEL'' and inserting ''COPYRIGHT ROYALTY ADJUDICATION BOARD''; and

(B) by striking ''a copyright arbitration royalty panel and inserting ''the Copyright Royalty Adjudication Board''.

(e) USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING.—Section 118 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(B) in paragraph (1), as so redesignated, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Adjudication Board'';

(C) in paragraph (2), as so redesignated—

(i) by striking ''paragraph (2)'' each place it appears and inserting ''paragraph (1)'';

(ii) by striking ''Librarian of Congress'' the first place it appears and inserting ''Copyright Royalty Adjudication Board'';

(iii) by striking ''Librarian of Congress'' the second and third places it appears and inserting ''Board''; and

(iv) by striking ''Librarian of Congress'' the last place it appears and inserting ''Board, upon the approval of the Register of Copyrights,'';

(2) in subsection (c)—

(A) by striking ''1997'' and inserting ''2002''; and

(B) by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Adjudication Board, upon the approval of the Register of Copyrights,'';

(3) in subsection (d)—

(A) by striking ''(b)(2)'' and inserting ''(b)(1)''; and

(B) by striking ''a copyright arbitration royalty panel under subsection (b)(3)'' and inserting ''the Copyright Royalty Adjudication Board under subsection (b)(2)''; and

(4) in subsection (e), by striking paragraphs (1) and (2).

(f) DIGITAL AUDIO RECORDING DEVICES AND MEDIA.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) of title 17, United States Code, is amended in the third sentence—

(A) by striking ''the 6th year after the effective date of this chapter'' and inserting ''1998'';

(B) by striking ''Librarian of Congress'' the first place it appears and inserting ''Copyright Royalty Adjudication Board''; and

(C) by striking ''Librarian of Congress'' the second place it appears and inserting ''Board''.

(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) of title 17, United States Code, is amended by striking ''Librarian of Congress shall convene a copyright arbitration royalty panel which'' and inserting ''Copyright Royalty Adjudication Board''.

(3) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 of title 17, United States Code, is amended—

(A) in subsection (a)(1)—

(i) by striking ''after the calendar year in which this chapter takes effect'';

(ii) by striking ''Librarian of Congress'' the first place it appears and inserting ''Copyright Royalty Adjudication Board''; and

(iii) by striking ''Librarian of Congress'' the second place it appears and inserting ''Board'';

(B) in subsection (b)—

(i) by amending the first sentence to read as follows: ''After the first day of March of each year, the Copyright Royalty Adjudication Board shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c).''; and

(ii) by striking ''Librarian of Congress'' each place it appears and inserting ''Board''; and

(C) in subsection (c)—

(i) by amending the first sentence to read as follows: ''If the Copyright Royalty Adjudication Board finds the existence of a controversy, the Board shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments.'';

(ii) by striking ''Librarian of Congress'' each place it appears and inserting ''Board''; and

(iii) by striking ''Librarian under this section'' and inserting ''Board under this section. The action of the Board to distribute royalty fees may precede the declaration of a controversy if all parties to the proceeding file a petition with the Board requesting such distribution, except that such amount may not exceed 50 percent of the amounts on hand at the time of the request.''.

(4) ADJUDICATION OF CERTAIN DISPUTES.—Section 1010 of title 17, United States Code, is amended—

(A) by amending the section heading to read as follows:

''§ 1010. Adjudication of certain disputes'';

(B) in subsection (a)—

(i) in the subsection heading by striking ''ARBITRATION'' and inserting ''ADJUDICATION''; and

(ii) by striking ''mutually agree to binding arbitration for the purpose of determining'' and inserting ''petition the Copyright Royalty Adjudication Board to determine'';

(C) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(D) in subsection (b), as so redesignated, by striking ''arbitration'' each place it appears and inserting ''adjudication'';

(E) by amending subsection (c), as so redesignated, to read as follows:

''(c) ADJUDICATION PROCEEDING.—The Copyright Royalty Adjudication Board shall conduct an adjudication proceeding with respect to the matter concerned, pursuant to chapter 8 of this title. The parties to the proceeding shall bear the entire costs thereof in such manner and proportion as the Board shall direct.''; and

(F) by striking subsections (e), (f), and (g).

SEC. 10. TECHNICAL AMENDMENTS.

(a) CLERICAL AMENDMENT TO CHAPTER 10 OF TITLE 17, UNITED STATES CODE.—The item relating to section 1010 in the table of contents for chapter 10 of title 17, United States Code, is amended to read as follows:

''1010. Adjudication of certain disputes.''.

(b) CLERICAL AMENDMENT TO CHAPTER 9 OF TITLE 17, UNITED STATES CODE.—The item relating to section 903 in the table of contents for chapter 9 of title 17, United States Code, is amended to read as follows:

''903. Ownership, transfer, licensing, and recordation.''.

(c) CLERICAL AMENDMENT TO TABLE OF CHAPTERS.—The item relating to chapter 6 in the table of chapters for title 17, United States Code, is amended to read as follows:

''6. Manufacturing Requirements and Importation ..... 601''.

SEC. 11. RETRANSMISSION CONSENT.

Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

''(b)(1) No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

''(A) with the express authority of the station;

''(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or

''(C) pursuant to section 337, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

''(2) The provisions of this subsection shall not apply to—

''(A) retransmission of the signal of a noncommercial broadcasting station;

''(B) retransmission of the signal of a superstation by a satellite carrier to subscribers for private home viewing if the originating station was a superstation on January 1, 1998;

''(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is located in an area in which such station

may not assert its rights not to have its signal duplicated under the Commission's network nonduplication regulations; or

''(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on January 1, 1998.'';

(2) by adding at the end of paragraph (3) the following new subparagraph:

''(C) Within 45 days after the effective date of the Copyright Compulsory License Improvement Act, the Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitation contained in paragraph (2). Such regulations shall establish election time periods that correspond with those regulations adopted under subparagraph (B). The rulemaking shall be completed within 180 days after the effective date of the Copyright Compulsory License Improvement Act.''; and

(3) by adding at the end the following new paragraph:

''(7) For purposes of this subsection:

''(A) The term 'superstation' means a television broadcast station, other than a network station, licensed by the Commission that is secondarily transmitted by a satellite carrier.

''(B) The term 'satellite carrier' has the meaning given that term in section 119(d) of title 17, United States Code.''.

SEC. 12. MUST-CARRY FOR SATELLITE CARRIERS RETRANSMITTING TELEVISION BROADCAST SIGNALS.

Title III of the Communications Act of 1934 is amended by inserting after section 336 the following new section:

''SEC. 337. CARRIAGE OF LOCAL TELEVISION SIGNALS BY SATELLITE CARRIERS.

''(a) CARRIAGE OBLIGATIONS.—Each satellite carrier providing direct to home service of a network station to subscribers located within the local market of such station shall offer to carry all television broadcast stations located within that local market, subject to section 325(b). Carriage of additional television broadcast stations within the local market shall be at the discretion of the satellite carrier, subject to section 325(b).

''(b) DUPLICATION NOT REQUIRED.—Notwithstanding subsection (a), a satellite carrier shall not be required to offer to carry the signal of any local television broadcast station that substantially duplicates the signal of another local television broadcast station which is secondarily transmitted by the satellite carrier, or to offer to carry the signals of more that one local television broadcast station affiliated with a particular broadcast network (as the term is defined by regulation).

''(c) CHANNEL POSITIONING.—Each signal carried in fulfillment of the carriage obligations of a satellite carrier under this section shall be carried on the satellite carrier channel number on which the local television broadcast station is broadcast over the air, or on the channel on which it was broadcast on January 1, 1985, or on the channel it was broadcast on January 1, 1998, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the satellite carrier. Any dispute regarding the positioning of local television broadcast stations shall be resolved by the Commission.

''(d) COMPENSATION FOR CARRIAGE.—A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the principal headend of the satellite carrier.

''(e) REMEDIES.—

''(1) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier is obligated to offer to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The satellite carrier shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning or other requirements of this section. A local television broadcast station that is denied carriage or channel positioning or repositioning in accordance with this section by a satellite carrier may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

''(2) OPPORTUNITY TO RESPOND.—The Commission shall afford such satellite carrier and opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

''(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed, the Commission shall determine whether the satellite carrier has met its obligations under this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the satellite carrier has fully met the requirements of this section, it shall dismiss the complaint.

''(f) REGULATIONS BY COMMISSION.—Within 180 days after the effective of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section.

''(g) DEFINITIONS.—As used in this section:

''(1) TELEVISION BROADCAST STATION.—The term 'television broadcast station' means a full-power television broadcast station, and does not include a low-power or translator television broadcast station.

''(2) LOCAL MARKET.—The term 'local market' means the designated market area in which a station is located and—

''(A) for a commercial television broadcast station located in any of the 150 largest designated market areas, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market;

''(B) for a commercial television broadcast station that is located in a designated market area that is not one of the 150 largest, the local market includes, in addition to all commercial television broadcast stations licensed to a community within the same designated market area, any station that is significantly viewed, as such term is defined in section 76.54 of the Commission's regulations (47 C.F.R. 76.54); and

''(C) for a noncommercial educational television broadcast station, the local market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

''(3) DESIGNATED MARKET AREA.—The term 'designated market area' means a designated market area, as determined by the Nielsen Media Research and published in the DMA Market and Demographic Report.''.

SEC. 13. NETWORK NONDUPLICATION; SYNDICATED EXCLUSIVITY AND SPORTS BLACKOUT.

(a) REGULATIONS.—

(1) IN GENERAL.—Within 45 days after the effective date of this Act, the Federal Communications Commission shall commence a rulemaking to establish regulations that apply network nonduplication protection, syndicated exclusivity protection, and sports blackout protection to the retransmission of broadcast signals by satellite carriers to subscribers for private home viewing. To the extent possible, such regulations shall, subject to paragraph (2), include the same level of protection accorded retransmissions of television broadcast signals by cable systems for network nonduplication (47 C.F.R. 76.92), syndicated exclusivity (47 C.F.R. 151), and sports blackout (47 C.F.R. 76.67).

(2) NETWORK NONDUPLICATION.—The network nonduplication regulations required under paragraph (1) shall allow a television broadcast station in any local market to assert nonduplication rights—

(A) against a satellite carrier throughout such local market if that satellite carrier retransmits to subscribers for private home viewing in such local market the signal of another television broadcast station located within such local market; or

(B) against all satellite carriers within the zone in which the television broadcast station may be received over-the-air, using conventional consumer television receiving equipment, as determined under regulations prescribed by the Federal Communications Commission, but such zone shall not extend beyond such local market of such station.

(3) LOCAL MARKET DEFINED.—The term ''local market'' has the meaning provided in section 337(g) of the Communications Act of 1934, as added by section 12 of this Act.

(b) DEFERRED APPLICABILITY OF AMENDMENTS TO SECTION 119 OF TITLE 17, UNITED STATES CODE.—Notwithstanding the amendments to section 119 of title 17, United States Code, made by this Act, until the regulations regarding network nonduplication protection are established under subsection (a), the statutory license under subsection (a) of such section 119 for secondary transmissions of primary transmissions of programming contained in a primary transmission made by a network station (as defined in section 119(d) of title 17, United States Code, as in effect on the day before the effective date of this Act) shall be limited to secondary transmissions to persons who reside in unserved households (as defined in section 119(d) of title 17, United States Code, as in effect on the day before the effective date of this Act).

SEC. 14. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on January 1, 1999.

SECTION BY SECTION ANALYSIS OF THE COPYRIGHT COMPULSORY LICENSE IMPROVEMENT ACT

SECTION 1

The title of the bill is the ''Copyright Compulsory License Improvement Act.''

SECTION 2

Section 2 of the bill amends the section 119 satellite carrier compulsory license of the

Copyright Act to create a statutory licensing scheme that permits satellite carriers to provide their subscribers with local and distant television broadcast signals, as well as the national satellite feed of the Public Broadcasting Service. Satellite carriers may retransmit any television broadcast signals to subscribers for private home viewing, provided that such retransmissions are in compliance with the rules and regulations of the Federal Communications Commission. Such compliance would include syndicated exclusivity, sports blackout and network nonduplication protection for broadcasters, as required by section 13 of the bill.

Section 2 requires satellite carriers to provide initial and updated lists to local television stations identifying subscribers in the local television station's area who receive satellite service and the names of the network stations provided to those subscribers. This will allow television stations to preserve their network nonduplication rights provided in section 13 of the bill.

Section 2 prohibits satellite carriers from willfully altering the programming contained on television broadcast signals and the PBS national satellite feed that the carriers retransmit. In addition, satellite carriers are prohibited from unlawfully discriminating against a distributor of satellite retransmitted broadcast programming, and any such unlawful discrimination constitutes an act of copyright infringement subject to the penalties of chapter 5 of the Copyright Act. It is also copyright infringement for a satellite carrier to fail to submit a statement of account and royalty fee necessary to obtain the satellite compulsory license.

SECTION 3

Section 3 of the bill creates the terms and conditions of the satellite compulsory license. Carriers must submit a statement of account and royalty fee to the Copyright Office on a semiannual basis for subsequent distribution to copyright owners. The royalty fee for retransmission of distant television broadcast stations, and the PBS national feed, is the royalty fee in effect on date of enactment of the bill for retransmission of distant television broadcast signals. There is no royalty fee for television broadcast signals that are retransmitted to subscribers who reside within the local markets of such signals.

The remainder of section 3 continues the provisions of the existing law by prescribing how the royalty fees are collected and maintained for distribution, and how copyright owners of works contained on retransmitted television broadcast signals and the PBS national feed may claim royalties.

SECTION 4

Section 4 of the bill contains definitions of terms used in the section 119 compulsory license. Most of the definitions in the existing law are carried forward. New provisions include a definition of ''designated market area'' and ''local market'' for determining royalty-free local retransmissions of broadcast signals, and a definition of the new PBS national feed.

SECTION 5

Section 5 of the bill carries forward the provision of existing law maintaining exclusivity of the satellite license with the cable compulsory license of the Copyright Act, found at 16 U.S.C. 111. That is, a satellite carrier making secondary transmissions of television broadcast signals, and the PBS national feed, for private home viewing may only do so under the terms of the section 119 license, and may not invoke the terms of the section 111 cable license.

SECTION 6

Section 6 of the bill contains a conforming amendment amending the table of contents of chapter 1 of the Copyright Act.

SECTION 7

Section 7 of the bill completely revises chapter 8 of the Copyright Act, replacing the current Copyright Arbitration Royalty Panels with a Copyright Royalty Adjudication Board.

New section 801 of the Copyright Act establishes the Copyright Royalty Adjudication Board within the U.S. Copyright Office.

New section 802 of the Copyright Act establishes the membership and qualifications of the Board. New section 802(a) establishes that the Board should be comprised of one full-time Chief Administrative Copyright Judge and at least two part-time Administrative Copyright Judges. It is left up to the discretion of the Librarian of Congress, upon the recommendation of the Register of Copyrights, to determine how many other part-time Administrative Copyright Judges the Board shall have. The determination should be based on how many judges the Board will need to conduct its business in a timely manner.

New section 802(b) requires that the Chief Administrative Copyright Judge be an attorney with ten or more years of legal practice and have experience either in administrative hearings or court trials, and a demonstrated knowledge of copyright law. Other Administrative Copyright Judges must possess expertise in the business and economics of industries affected by the actions the Board takes.

New section 802(c) provides that the term of the Board members shall be five years on a staggered basis so that no more than one term is due to expire in any one year. To achieve this, the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall appoint some of the initial Board members to shorter than five year terms.

New section 802(d) provides compensation for the members of the Board at the Senior Level in accordance with the provisions of 5 U.S.C. §5376.

New Section 803 of the Copyright Act provides for selection of the members of the Board. New section 803(a) provides that the Librarian of Congress, upon the recommendation of the Register of Copyrights, selects the members of the Board. The Librarian may only select those persons found qualified under section 802(b) and found to meet the financial conflict of interest standards adopted under section 805(a). The Librarian may reselect, without limit, members of the Board to additional terms. Section 803(b) provides that actions taken by the Board during those times will be valid, notwithstanding any temporary vacancy.

New section 804 of the Copyright Act provides for the independence of the Board. New section 804(a) provides that the Board shall have decisional independence on the substantive matters before it. Board members are neither to receive performance appraisals nor are they to be assigned duties inconsistent with their duties and responsibilities as members of the Board.

New section 805 of the Copyright Act provides for removal and sanction of the members of the Board. New section 805(a) provides that the Register of Copyrights shall adopt regulations regarding the standards of conduct that members of the Board are expected to maintain. The Register is specifically instructed to adopt regulations concerning financial conflict of interest and *ex parte* communications.

New section 805(b) provides that the Librarian, upon the recommendation of the Register of Copyrights, may remove or sanction a member of the Board, upon notice and opportunity for hearing, for violation of any of the standards of conduct adopted under section 804(a). In addition, the Librarian may also remove or sanction for misconduct, neglect of duty, or any disqualifying physical or mental disability.

New section 806 of the Copyright Act provides for the functions of the Board. New section 806(a) enumerates the rate setting, royalty distribution, and rulemaking functions that are delegated to the Board. The Board determines the rates for: cable retransmission of broadcast signals, the making and distributing of phonorecords by means other than digital phonorecord delivery, satellite carrier retransmission of broadcast signals, and the importing and distributing or manufacturing and distributing of digital audio recording devices.

The Board determines the rate and terms for: the public performance of a sound recording by means of a digital audio transmission; the making and distributing of phonorecords by means of a digital phonorecord delivery; the public performance of music on jukeboxes; the use of music and visual works by public broadcasting entities; and the transmission to the public by a satellite carrier of a primary transmission of a public telecommunications signal.

The Board accepts or rejects claims filed by copyright owners to royalties deposited with the Copyright Office in the cable fund, the satellite carrier fund, and the digital audio recording fund. Then, for those claims that the Board accepts, the Board determines how much each claimant should receive from those funds.

The Board has jurisdiction to decide, when petitioned, if a particular digital audio recording device or digital audio recording interface device is subject to the provisions of chapter 10 for paying a royalty on the distribution of such devices.

The Board also has certain rulemaking authority, some of which is upon the approval of the Register of Copyrights, concerning the filing of claims, the notice and recordkeeping requirements pertaining to some of the compulsory licenses, and the Board's own procedures.

New section 806(b) provides that the creation of the Copyright Royalty Adjudication Board does not diminish the authority of the Register of Copyrights to establish regulations interpreting the provisions and terms of the Copyright Act.

New section 807 of the Copyright Act sets out the factors for determining the royalty fees for the section 114, 115, 116, 118 and 119 compulsory licenses of the Copyright Act. The section also lists the factors that the Board shall take into account when determining or adjusting royalty rates.

New section 808 of the Copyright Act provides for the institution of royalty distribution and rate adjustment proceedings under the compulsory licenses. New section 808 instructs the Board when proceedings shall occur, and whether the proceedings require a petition to initiate them or whether they commence automatically.

New section 809 of the Copyright Act describes the conduct of royalty distribution and rate adjustment proceedings. New section 809(a) provides that the Board shall conduct its proceedings in accordance with the Administrative Procedure Act. New section 809(b) provides that the Board shall adopt its own rules of procedures upon the approval of the Register of Copyrights. New section 809(c) authorizes the Copyright Office, in its discretion, to file formal pleadings with the Board on any matter pending before the Board. All Copyright Office pleadings shall be formally filed and served on all the parties to the proceeding. The Board may accept or reject the advice of the Copyright Office.

New section 809(d) provides that all actions of the Board are by majority rule. New section 809(e) allows the Board the discretion to determine whether, in a particular proceeding, one or three members should preside. New section 809(f) permits all parties whose claims are accepted or who have an interest in the royalty rate to be set to participate in the proceeding and submit relevant proposals and evidence.

New section 809(g) provides that, except as provided in sections 118 and 119(c), the time limit for the issuance of initial decisions in proceedings with one presiding member shall be six months from the declaration of the controversy, and the time limit for initial decisions in proceedings with three presiding members shall be one year from the declaration on the controversy.

New section 809(h) provides that the initial decision shall contain the same level of reasoned decision-making that is required under the Administrative Procedure Act, and take into account the precedent of the decisions of the Copyright Royalty Tribunal, the copyright arbitration royalty/panels and the decisions of the Librarian of Congress made in respect to the copyright arbitration royalty panels.

New section 809(i) provides the parties to the proceeding and the Register of Copyrights an opportunity to petition the entire Board to reconsider any initial decision issued by its presiding member or members. If there are no petitions for reconsideration, the initial decision becomes the final decision automatically. If there are petitions for reconsideration, the entire Board considers the petition, and issues a final decision. The final decision of the entire Board constitutes final agency action. Section 809(i) provides that the time limits for filing petitions for reconsideration, and for the entire Board to issue the final decision shall be determined by regulation.

New section 810 of the Copyright Act provides for judicial review of Board determinations. New section 810(a) provides that when the initial decision becomes the final decision, the Board shall have one week to publish the final decision in the Federal Register. Parties aggrieved by the decision of the Board shall have 30 days from the appearance of the final decision in the Federal Register to appeal the decision to the United States Circuit Court of Appeals for the Federal Circuit. In that case, the Board shall be the defending party, and the Chairperson of the Board shall refer the conduct of the Board's defense to the Department of Justice. Notwithstanding the pendency of any appeal, persons who would pay the royalty rates adjusted by the Board's decision are still obligated to pay the adjusted rate and, if applicable, to file a statement of account with the Copyright Office.

New section 810(b) provides that judicial review of the Board's final decision is in accordance with the Administrative Procedure Act.

New section 811 delineates various administrative matters related to administration of the compulsory licenses. New section 811(a) instructs the Librarian of Congress, upon the recommendation of the Register of Congress, to provide the Board with the necessary administrative services and personnel support it needs. Personnel support may include the services of experts such as a statistician or an economist, when a particular proceeding requires such expertise.

New section 811(b) delegates to the Board the authority to publish in the Federal Register notices of the Board's actions in its proceedings, and such regulations as the Board has been delegated the exclusive right to adopt. New section 811(c) authorizes the Librarian of Congress to assess fees for the reasonable costs incurred in a rate making proceeding from those parties interested in participating in the proceeding. The section further authorizes the Register of Copyrights to deduct from the ratemaking fees and from the royalty fees deposited with the Copyright Office the reasonable costs incurred by the Copyright Office and the Board.

New section 811(d) provides that notwithstanding any ceiling imposed on the full-time equivalent positions in the Library of Congress, the members of the Board or employees in support of the Board do not count in the calculation of that ceiling.

New section 811(e) provides that when the Register of Copyright submits to Congress the budget of the Copyright Office, the Register shall identify the portion intended for the Board with a statement assessing the Board's budgetary needs.

Section 811(f) provides that the Board shall prepare its own annual report and it shall be included in the Copyright Office's annual report.

Section 812 provides a rule of construction continuing the general power of the Register of Copyrights to establish regulations governing the Copyright Act, and makes technical and conforming amendments, including providing for appeals from decisions of the Board to the Court of Appeals for the Federal Circuit.

SECTION 8

Section 8 of the bill provides transitional rules for the establishment of the Board. For example, prior to the constituting of the Board, the Register of Copyrights shall adopt the Board's rules of procedure, but that when the Board is constituted, it may adopt supplemental or superseding regulations, upon the approval of the Register of Copyrights.

The section also provides that copyright arbitration royalty panels that have already been convened at the time of the passage of this act may continue and complete their proceeding, unless the Register of Copyrights, finds for good cause, that the proceeding should be discontinued. For those proceedings that continue, the report of the copyright arbitration royalty panels shall be submitted to the Librarian of Congress, or the Librarian may, in his discretion, direct the panel to submit the report to the Board. If there are any appeals pending of a decision of a copyright arbitration royalty panel that are eventually remanded by the Court, the remanded case shall go to the Board, not to a reconvened copyright arbitration royalty panel.

SECTION 9

Section 9 of the bill contains conforming amendments to substitute the Copyright Royalty Adjudication Board for the copyright arbitration royalty panels and the Librarian of Congress wherever appropriate.

SECTION 10

Section 10 makes technical and conforming amendments.

SECTION 11

Section 11 amends the section 325 of the Communications Act to provide that satellite carriers must in certain circumstances obtain retransmission permission from a broadcaster before they can retransmit the signal of a network broadcast station. Like the regime applicable to the cable industry, network broadcasters are afforded the option of either granting retransmission consent, or they may elect must-carry status as provided in section 12 of the bill. All satellite carriers that provide local service of television network stations must obtain either retransmission consent of the local broadcasters, or carry their signals subject to the must-carry provisions.

Section 11 does exempt carriage of certain broadcast stations from the retransmission consent requirement. Retransmission consent does not apply to noncommercial broadcasting stations, and superstations that existed as superstations on January 1, 1998. Also exempt from the retransmission consent requirement is retransmission of a network station to a household that is not subject to the network nonduplication protection provided in section 13 of the bill. The purpose of this provision is to allow subscribers who reside in the designated market area of a network affiliate, but do not live in an area where the relevant local stations can request network nonduplication (assuring that a subscriber does not or cannot otherwise receive the signal of the local affiliate) to obtain a distant signal of the same network from their satellite carrier.

Section 11 also directs the Federal Communications Commission to, within 45 days of enactment of the bill, commence a rulemaking proceeding to adopt regulations governing the exercise of retransmission rights for satellite retransmissions for private home viewing.

SECTION 12

Section 12 of the bill creates must-carry obligations for satellite carriers retransmitting television broadcast signals. The provisions are similar to those applicable to the cable industry. Any satellite carrier that retransmits a network television broadcast signal to subscribers residing within the local market of that signal, must offer to carry all the television stations in the local market to subscribers residing in the local market. This approach of ''carry one, then carry all'' is subject to the retransmission consent election of section 11 of the bill. Thus, a satellite carrier does not have to carry a local television broadcast station if the station elects retransmission consent rather than must-carry. The ''local market'' of a broadcast station is defined as the station's Designated Market Area, as determined by Nielsen Media Research.

Section 12 tracks the cable must-carry provisions of the 1992 Cable Act by relieving satellite carriers from the burden of having to carry more than one affiliate of the same network if both of the affiliates are located in the same local market. Local broadcasters are also afforded channel positioning rights, and are required to provide a good quality signal to the satellite carrier's principal headend in order to assert must-carry rights. Satellite carriers are forbidden from obtaining compensation from local broadcasters in exchange for carriage. Section 12 also provides a means for broadcasters to seek redress from the Federal Communications Commission for violations of the must-carry obligations.

SECTION 13

Section 13 of the bill directs the Federal Communications Commission, within 45 days of enactment of the bill, to commence rulemaking proceedings to impose network nonduplication protection, syndicated exclusivity and sports blackout protection on satellite retransmissions of television broadcast signals for private home viewing. The regulations to be adopted are to be similar to those currently in force for retransmissions of television broadcast signals by cable systems, to the extent possible, recognizing that there are technological and other differences between cable and satellite.

In adopting network nonduplication protection rules, the Commission is directed to adopt rules that permit satellite carriers to provide distant network signals to subscribers who reside within the designated market area of a network station affiliated with the same network but cannot receive an over-the-air signal of the local affiliate, and further do not receive the local signal from a cable or satellite service. The purpose of this provision is to prevent local affiliates from asserting network nonduplication protection

against subscribers who legitimately cannot or do not receive the local network affiliate signal, but allow stations to protect their network exclusivity if they do. Thus, if the satellite carrier serving a subscriber provides him or her with the local affiliate for that designated market area, the satellite carrier may not also provide such subscriber with distant network signals affiliated with the same network. Additionally, if a subscriber can receive the local affiliate's signal over the air, the satellite carrier cannot provide distant network signals affiliated with the same network. This replaces the current ''white area'' system, based on the Grade-B contour of a station enforceable in court, with rules prescribed and overseen by the FCC, once the FCC establishes rules.

SECTION 14

This section provides that the bill shall become effective on January 1, 1999.

Mr. LEAHY. Mr. President, today I am introducing a bill with Chairman HATCH concerning satellite television that I hope will prove to be good news for consumers throughout the nation and in Vermont.

I greatly appreciate this opportunity to work with Chairman HATCH and Senator KOHL.

We intend for this bill to lead to head-to-head competition between cable and satellite TV providers. This should open more choices and services to Vermonters, at lower prices. The bill also will allow householders who want to subscribe to this new satellite TV service to receive all local Vermont TV stations by satellite. The goal is to offer Vermonters more choices, more TV selections—and especially of local programming—but at lower rates.

In areas of the country where there is this full competition with cable providers, rates to customers are considerably lower. I helped foster the home satellite industry with passage of the Satellite Home Viewer Act in 1988 and the extension of that act in 1994. Now it is time for the home satellite industry to offer a competitive alternative to cable. It is my hope that we can foster that competition and do so in a way that preserves the local perspective and service provided by the local network affiliate system.

This bill is intended to permit satellite TV providers to offer the networks through their local TV channels to viewers throughout Vermont and a full complement of superstations and movies. This means that local Vermont TV stations will be available over satellite to many areas of Vermont currently unserved by satellite or by cable.

I have received scores of letters from Vermonters who have complained about the current situation. Under current law, it is illegal for satellite TV providers to offer local TV channels over a satellite dish when you live in a area where you are likely to get a clear TV signal with a regular rooftop antenna.

This means that thousands of Vermonters living in or near Burlington cannot receive local signals over their satellite dishes. I understand their frustration. At our farm in Middlesex, we receive signals from one and a half stations.

This bill is intended to adjust the statutory copyright licenses in order to allow satellite carriers to offer local TV signals to viewers no matter where they live in Vermont. To take advantage of this opportunity, satellite carriers will in general have to follow the rules that cable providers have to follow. This will mean that they must carry all full-power local Vermont TV stations in their TV offering.

Today, Vermonters receive satellite signals with programming from stations in other states. In other words, they would get a CBS station from another state but not WCAX, the Burlington CBS affiliate. I hope that our bill will correct this upside-down situation and make network programming available to all, while preserving local programming and respecting the affiliate system.

By allowing satellite providers to offer a larger variety of programming, including local stations, the satellite industry would be able to compete with cable, and the cable industry will be competing with satellite carriers. Cable will continue to be a highly effective competitor with its ability to offer extremely high-speed Internet connections to homes and businesses.

A major reason I voted against the Telecommunications Act of 1996—and I was only one of five who voted against that bill—was my fear that cable, satellite and telephone rates would go up significantly in rural states. I wish I had been wrong, but the rates, in fact, have been climbing since then. When fully implemented this bill should reverse that trend as has been the case in cities where there were competitors to cable.

The second major improvement in this bill is that satellite carriers that offer local Vermont channels in their mix of programming will be able to reach Vermonters throughout our state. The system will be based on regions called Designated Market Areas, or DMAs, established through marketing surveys done by the Nielsen Corporation ratings organization.

Vermont has one large DMA covering most of the state and part of the Adirondacks in New York—the Burlington-Plattsburg DMA—and parts of two smaller ones in Bennington County (the Albany-Schenectady-Troy DMA) and in Windham County (the Boston DMA).

Over time those two counties could be included in the Burlington-Plattsburg DMA depending on marketing, advertising and other demographic factors that Nielsen Corporation examines.

This new satellite system is not yet available. Companies are preparing to launch spot-beam satellites to take advantage of this bill. I encourage them to do so. Using current technology, signals would be provided by spot-beam satellites using some 150 regional uplink sites throughout that nation to beam local signals up to two satellites. Those satellites would use 60 spot beams to send those local signals, received from the regional uplinks, back to satellite dish owners. High-definition TV would be offered under this system at a later date.

Under this bill, and using this spot-beam technology, home owners with satellite dishes in downtown Burlington, and in almost every county in Vermont, would receive all the full-power TV stations in the Burlington-Plattsburg DMA, including Vermont public television. Therefore, subscribers to the new satellite technology would be able to receive WPTZ, WCAX, WNNE, Vermont public television, and other full-power broadcast stations, throughout most of Vermont. Bennington residents would receive the stations in the Schenectady-Albany-Troy DMA. Windham County residents would receive full power stations in the Boston DMA.

As I mentioned earlier, Bennington and Windham Counties could be included in the Burlington-Plattsburg DMA at a later date as the demographics of the region evolve, or as technology changes.

Under this bill, Vermonters will have more choices. Those who want this new satellite service will be allowed to sign up in the next couple of years or keep their present satellite service.

Those who want to stick with cable, or with regular broadcast TV, are able to continue their viewing in those ways. Since technology advances so quickly, other systems could be developed before this bill is fully implemented that would provide other service but using different technologies.

I share the frustration of so many that laws and regulations in this case have tended to frustrate consumer choices and stifle technology. That is not the way it should be. It is time to update our satellite viewing laws to encourage full and vigorous competition with the cable industry and expand viewer options.

Mr. KOHL. Thank you, Mr. President. Along with my colleagues, Senators HATCH and LEAHY, I rise in support of the Copyright Compulsory License Improvement Act of 1997. This proposal, although clearly not a final product, is an important step forward in creating true competition between satellite and cable television. And that is an important step forward for consumers.

Mr. President, this bill generally takes the right approach. It gives satellite carriers the ability to provide the one thing that consumers want most: local television broadcast signals. In return, the satellite carriers must comply with FCC regulations governing syndicated exclusivity, sports blackout protection, and network nonduplication. The measure also creates a retransmission consent process, and establishes certain ''must carry'' obligations on satellite carriers that rebroadcast local signals. As a

general premise, it seems only fair that the benefits of carrying local signals should be balanced with reasonable regulatory burdens that are consistent with cable's obligations. But we should also look at reducing at least some of the ''must carry'' burdens—for example, why should any provider be required to carry the Home Shopping Network, which is predominantly commercial?

So what does all this mean for businesses and consumers? Hopefully, it will create more availability and affordability in television programs. And it will help to preserve local television stations, who provide all of us with vital information like news, weather, and special events—especially sports. We ought to get moving on this sooner, rather than later. It would be a mistake to wait until just before the license expires in 1999.

This measure replaces the Copyright Arbitration Royalty Panels with a Copyright Royalty Adjudication Board. In addition to its clever new acronym (''CRAB''), the Board in the future will hopefully find a better way to create parity in the fees that cable and satellite providers pay in copyright royalties. This time around, however, it would be wise to lower legislatively the recently proposed 27 cent rate.

In any event, we should view the Copyright Compulsory License Improvement Act as a point of departure rather than a final product. I am hopeful we can work with the Commerce Committee, which clearly has an important role to play in many of these matters. This measure is a significant step in promoting competition, and Senators HATCH and LEAHY deserve enormous credit for creating a constructive approach, which can only benefit consumers nationwide. I urge my colleagues to join me in supporting it.

SENATE CONCURRENT RESOLUTION 80—CONCERNING SURVIVOR BENEFITS FOR WIDOWS AND WIDOWERS OF RAILROAD RETIREES

Ms. MOSELEY-BRAUN submitted the following concurrent resolution; which was referred to the Committee on Labor and Human Resources:

S. CON. RES. 80

Whereas for years, many in the railroad industry have argued that annuities paid to widows and widowers under the Railroad Retirement Act of 1974 are inadequate;

Whereas during the lifetime of the employee and the spouse, the employee receives a full annuity and so does the spouse;

Whereas after the employee's death, however, only a widow's or widower's annuity is payable, which under current law is less than that widow or widower received as a spouse in the month before the employee's death;

Whereas this widow's or widower's annuity is often found inadequate and leaves the survivor with less than the amount of income needed to meet ordinary and necessary living expenses; and

Whereas no outside contributions from the American taxpayer are needed, and any changes will be paid for from within the railroad industry itself: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) Congress recognizes the concern of many in the railroad industry that the widow's and widower's annuity under the current system is inadequate and often leaves the survivor with less than the amount of income needed to meet ordinary and necessary living expenses;

(2) Congress also recognizes that a process of dialogue must take place among all parties of the railroad community including rail labor, management, and retiree organizations before railroad annuity legislation can be enacted; and

(3) because of the self-sufficient and unique nature of the Railroad Retirement System, Congress urges and exhorts all parties of the railroad community, including rail labor, management, and retiree organizations to find a suitable way to fund an amendment that would improve the survivor benefits component to the Railroad Retirement Act of 1974.

Ms. MOSELEY-BRAUN. Mr. President, today I am submitting a concurrent resolution calling on railroad employers, employees, and retiree organizations to work together to provide for a secure retirement for widows and widowers of railroad employees.

Currently, when a railroad employee retires, that retiree and his or her spouse receive 145 percent of the retiree's full retirement annuity. When that retiree dies, however, his or her spouse loses 100 percent of the retiree's annuity, leaving only a 45 percent survivor's benefit. The result can be that widows and widowers of railroad employees no longer have sufficient income on which to live.

In Illinois alone, there are over 50,000 railroad retirees. Over three-quarters of these men and women are married. If nothing is done to correct these retirement inequities, the spouses of these retirees risk spending their final years in poverty.

Many in the railroad industry acknowledge that these survivor benefits are inadequate. While railroad employees and employers pay substantially higher employment taxes than companies covered by Social Security, the higher taxes are not reflected in the level of benefits to which widows and widowers of retirees are entitled.

This resolution calls on the railroad industry to forge a consensus to solve this problem. The resolution urges that rail labor, management, and retiree organizations open discussions for adequately funding an amendment to the Railroad Retirement Act of 1974 to modify the guaranteed minimum benefit for widows and widowers whose annuities are converted from a spouse to a widow or widower annuity.

I introduced a provision to allow for the payment of a survivor annuity to divorced widows and widowers of railroad retirees as part of the Women's Pension Equity Act of 1996. Under current law, a divorced spouse can receive certain retiree benefits but these end when the retiree dies. This loss of benefits can be devastating for divorced spouses who have been supporting themselves in their old age.

I am working to correct this illogical and unjust provision in the law, but without increasing survivor benefits, all widows and widowers, whether married or divorced, are at risk. Having survivor benefits today is not a guarantee of a secure retirement.

This resolution requires no expenditures of taxpayer funds, but merely expresses the intent of Congress that the issue of inadequate retirement income for widows and widowers of railroad retirees be resolved. This concurrent resolution was submitted in the House of Representatives by Congressman Jack Quinn, as House Concurrent Resolution 52.

I urge my colleagues to join me in supporting this concurrent resolution to improve retirement security for tens of thousands of widows and widowers across the country.

SENATE RESOLUTION—192—EXPRESSING THE SENSE OF THE SENATE TO CHANGE THE CULTURE OF ALCOHOL CONSUMPTION ON COLLEGE CAMPUSES

Mr. BIDEN submitted the following resolution; which was referred to the Committee on Labor and Human Resources:

S. RES. 192

Whereas many college presidents rank alcohol abuse as the number one problem on campus;

Whereas alcohol is a factor in the 3 leading causes of death for individuals aged 15 through 24 (accidents, homicides, and suicides);

Whereas more than any other group, college students tend to consume large numbers of drinks in rapid succession with the intention of becoming drunk;

Whereas 84 percent of college students report drinking alcohol during the school year, with 44 percent of all college students qualifying as binge drinkers and 19 percent of all college students qualifying as frequent binge drinkers;

Whereas alcohol is involved in a large percentage of all campus rapes, violent crimes, student suicides, and fraternity hazing accidents;

Whereas heavy alcohol consumption on college campuses can result in drunk driving crashes, hospitalization for alcohol overdoses, trouble with police, injury, missed classes, and academic failure;

Whereas the second-hand effects of student alcohol consumption range from assault, property damage, and unwanted sexual advances, to interruptions in study or sleep, or having to ''babysit'' another student who drank too much; and

Whereas campus binge drinking can also lead to the death of our Nation's young and promising students: Now, therefore, be it

Resolved,

SECTION 1. SHORT TITLE.

This resolution may be cited as ''The Collegiate Initiative To Reduce Binge Drinking Resolution''.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that, in an effort to change the culture of alcohol consumption on college campuses, all institutions of higher education should carry out the following:

(1) The president of the institution should appoint a task force consisting of school administrators, faculty, students, Greek system representatives, and others to conduct a full examination of student and academic life at the institution. The task force should make recommendations for a broad range of policy and program changes that would serve to reduce alcohol and other drug-related problems. The institution should provide resources to assist the task force in promoting the campus policies and proposed environmental changes that have been identified.

(2) The institution should provide maximum opportunities for students to live in an alcohol-free environment and to engage in stimulating, alcohol-free recreational and leisure activities.

(3) The institution should enforce a ''zero tolerance'' policy on the illegal consumption of alcohol by its students and should take steps to reduce the opportunities for students, faculty, staff, and alumni to legally consume alcohol on campus.

(4) The institution should vigorously enforce its code of disciplinary sanctions for those who violate campus alcohol policies. Students with alcohol or other drug-related problems should be referred to an on-campus counseling program.

(5) The institution should adopt a policy of eliminating alcoholic beverage-related sponsorship of on-campus activities. The institution should adopt policies limiting the advertisement and promotion of alcoholic beverages on campus.

(6) Recognizing that school-centered policies on alcohol will be unsuccessful if local businesses sell alcohol to underage or intoxicated students, the institution should form a ''Town/Gown'' alliance with community leaders. That alliance should encourage local commercial establishments that promote or sell alcoholic beverages to curtail illegal student access to alcohol and adopt responsible alcohol marketing and service practices.

Mr. BIDEN. Mr. President, over the last two days we have been debating in the Senate various amendments aimed at curbing drunk driving—a devastating byproduct of alcohol consumption. Today, I want to raise another alcohol-related issue—that of drinking on college campuses.

In recent years, we have all heard the stories about college students who are dying because of alcohol. A drunk student falls out of a dorm window in Virginia. Students from Massachusetts to Mississippi die of alcohol poisoning—drinking so much so fast that the alcohol literally kills them. In fact, so far this academic year, there have been at least 17 college students who have died in binge drinking incidents.

Unfortunately, this is not an isolated minority of college students. According to surveys, 44 percent of college students are binge drinkers, and nearly one in every five college students is a frequent binge drinker. This is not what parents expect when they send their kids off to college.

It is time for the culture on college campuses to change.

So, today, I am submitting a sense-of-the-Senate resolution calling on college and university administrators to carry out activities to reduce alcohol consumption on college campuses. This resolution—the Collegiate Initiative to Reduce Binge Drinking—was first submitted in the other body by Mr. KENNEDY of Massachusetts. I want to commend him for his initiative, and thank him for allowing me to join in this effort.

Specifically, the resolution calls on colleges and universities to appoint a task force to establish a policy on reducing alcohol and other drug-related problems; provide students with the opportunity to live in an alcohol-free environment; enforce a zero tolerance policy on the consumption of alcohol by minors; and eliminate alcoholic beverage-related sponsorship of on-campus activities. It also encourages colleges to work with local officials in the town in which they are located.

These activities are very similar to what is happening now at my state's largest college—the University of Delaware—which, according to a study by Harvard University, has had a binge drinking rate 50 percent higher than the national average. But, Mr. President, under the direction of the University's President, David P. Roselle—along with a grant from the Robert Wood Johnson Foundation—the University is actively seeking to reduce this rate and to reduce alcohol consumption on campus. So far, it appears to be working. In just one year—from October 1996 to October 1997—there were 30 fewer alcohol-related incidents on campus.

The lesson is that if we take the problem seriously and seriously address the problem, we can make a difference. The lives of students can be saved. I ask my colleagues to join me in encouraging college administrators to step up to the challenge—before the problem gets any worse.

ADDITIONAL COSPONSORS

S. 356

At the request of Mr. GRAHAM, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 356, a bill to amend the Internal Revenue Code of 1986, the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the title XVIII and XIX of the Social Security Act to assure access to emergency medical services under group health plans, health insurance coverage, and the medicare and medicaid programs.

S. 1141

At the request of Mr. JOHNSON, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 1141, a bill to amend the Energy Policy Act of 1992 to take into account newly developed renewable energy-based fuels and to equalize alternative fuel vehicle acquisition incentives to increase the flexibility of controlled fleet owners and operators, and for other purposes.

S. 1252

At the request of Mr. D'AMATO, the name of the Senator from Nevada (Mr. BRYAN) was added as a cosponsor of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1286

At the request of Mr. JEFFORDS, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1286, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain amounts received as scholarships by an individual under the National Health Corps Scholarship Program.

S. 1379

At the request of Mr. DEWINE, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Michigan (Mr. ABRAHAM) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. 1379, a bill to amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

S. 1386

At the request of Mr. LEVIN, the name of the Senator from Ohio (Mr. GLENN) was added as a cosponsor of S. 1386, a bill to facilitate the remediation of contaminated sediments in the waters of the United States.

S. 1395

At the request of Mr. SARBANES, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1395, a bill to amend the Higher Education Act of 1965 to provide for the establishment of the Thurgood Marshall Legal Educational Opportunity Program.

S. 1473

At the request of Mr. GRAHAM, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1473, a bill to encourage the development of a commercial space industry in the United States, and for other purposes.

S. 1536

At the request of Mr. TORRICELLI, the names of the Senator from Nevada (Mr. REID) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 1536, a bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis and to help women make informed choices about their reproductive and post-menopausal health care, and to otherwise provide for research and information concerning osteoporosis and other related bone diseases.

S. 1589

At the request of Mr. HUTCHINSON, the name of the Senator from Maine [Ms. COLLINS] was added as a cosponsor of S. 1589, a bill to provide dollars to the classroom.

S. 1638

At the request of Mr. CONRAD, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of S. 1638, a bill to help parents keep their children from starting to use tobacco products, to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children, to eliminate or greatly reduce the illegal use of tobacco products by children, to improve the public health by reducing the overall use of tobacco, and for other purposes.

S. 1647

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 1647, a bill to reauthorize and make reforms to programs authorized by the Public Works and Economic Development Act of 1965.

S. 1669

At the request of Mr. BOND, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 1669, a bill to restructure the Internal Revenue Service and improve taxpayer rights, and for other purposes.

S. 1673

At the request of Mr. HUTCHINSON, the names of the Senator from Colorado [Mr. CAMPBELL], the Senator from Idaho [Mr. KEMPTHORNE], and the Senator from Arizona [Mr. KYL] were added as cosponsors of S. 1673, a bill to terminate the Internal Revenue Code of 1986.

S. 1677

At the request of Mr. CHAFEE, the names of the Senator from Ohio [Mr. DEWINE], the Senator from Maine [Ms. COLLINS], and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of S. 1677, a bill to reauthorize the North American Wetlands Conservation Act and the Partnerships for Wildlife Act.

S. 1682

At the request of Mr. D'AMATO, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 1682, a bill to amend the Internal Revenue Code of 1986 to repeal joint and several liability of spouses on joint returns of Federal income tax, and for other purposes.

S. 1701

At the request of Ms. COLLINS, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1701, a bill to amend the Higher Education Act of 1965 in order to increase the dependent care allowance used to calculate Pell Grant Awards.

S. 1708

At the request of Mr. DASCHLE, the names of the Senator from Georgia [Mr. CLELAND] and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 1708, a bill to improve education.

SENATE JOINT RESOLUTION 41

At the request of Mr. SARBANES, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of Senate Joint Resolution 41, a joint resolution approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital.

SENATE CONCURRENT RESOLUTION 77

At the request of Mr. SESSIONS, the names of the Senator from Nebraska [Mr. HAGEL] and the Senator from New Hampshire [Mr. GREGG] were added as cosponsors of Senate Concurrent Resolution 77, a concurrent resolution expressing the sense of the Congress that the Federal government should acknowledge the importance of at-home parents and should not discriminate against families who forego a second income in order for a mother or father to be at home with their children.

SENATE RESOLUTION 155

At the request of Mr. LOTT, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of Senate Resolution 155, a resolution designating April 6 of each year as ''National Tartan Day'' to recognize the outstanding achievements and contributions made by Scottish Americans to the United States.

AMENDMENT NO. 1387

At the request of Mr. DOMENICI the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of amendment No. 1387 proposed to S. 1173, a bill to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

AMENDMENT NO. 1393

At the request of Mr. DOMENICI the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of amendment No. 1393 proposed to S. 1173, a bill to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

AMENDMENT NO. 1684

At the request of Mr. CHAFEE the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 1684 proposed to S. 1173, a bill to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

AMENDMENTS SUBMITTED

THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1998

BINGAMAN (AND BYRD) AMENDMENT NO. 1696

Mr. BINGAMAN (for himself and Mr. BYRD) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill (S. 1173) to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes; as follows:

On page 236, between lines 16 and 17, insert the following:

SEC. 14___. BAN ON SALE OF ALCOHOL THROUGH DRIVE-UP OR DRIVE-THROUGH SALES WINDOWS.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

''§ 154. Ban on sale of alcohol through drive-up or drive-through sales windows

''(a) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

''(1) FISCAL YEAR 2000.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2000, if the State does not meet the requirements of paragraph (3) on that date.

''(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2001, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

''(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law (including a regulation) that bans the sale of alcohol through a drive-up or drive-through sales window.

''(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

''(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

''(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2002.—Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 2002, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

''(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 2002.—No funds withheld under this section from apportionment to any State after September 30, 2002, shall be available for apportionment to the State.

''(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

''(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

''(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

''(B) TREATMENT OF CERTAIN FUNDS.—Sums not obligated at the end of the period referred to in subparagraph (A) shall lapse.

''(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall lapse.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code,

is amended by inserting after the item relating to section 153 the following:

''154. Ban on sale of alcohol through drive-up or drive-through sales windows.''.

DORGAN (AND OTHERS) AMENDMENT NO. 1697

Mr. DORGAN (for himself, Mr. LAUTENBERG, Mr. BUMBERS, Mr. CONRAD, Mr. WELLSTONE, Mr. GLENN, Mr. BINGAMAN, Mr. INOUYE, Mr. TORRICELLI, and Mr. REID) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

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

SEC. 14___. OPEN CONTAINER LAWS.

(a) ESTABLISHMENT.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

''§ 154. Open container requirements

''(a) DEFINITIONS.—In this section:

''(1) ALCOHOLIC BEVERAGE.—The term 'alcoholic beverage' has the meaning given the term in section 158(c).

''(2) MOTOR VEHICLE.—The term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail or rails.

''(3) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term 'open alcoholic beverage container' has the meaning given the term in section 410(i).

''(4) PASSENGER AREA.—The term 'passenger area' shall have the meaning given the term by the Secretary by regulation.

''(b) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

''(1) FISCAL YEAR 2002.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2001, if the State does not have in effect a law described in paragraph (3) on that date.

''(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1)(A), (1)(C), and (3) of section 104(b) on October 1, 2002, and on October 1 of each fiscal year thereafter, if the State does not have in effect a law described in paragraph (3) on that date.

''(3) OPEN CONTAINER LAWS.—

''(A) IN GENERAL.—For the purposes of this section, each State shall have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

''(B) MOTOR VEHICLES DESIGNED TO TRANSPORT MANY PASSENGERS.—For the purposes of this section, if a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container in the passenger area by the driver (but not by a passenger) of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or to the living quarters of a house coach or house trailer, the State shall be deemed to have in effect a law described in this subsection with respect to such a motor vehicle for each fiscal year during which the law is in effect.

''(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

''(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

''(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2003.—Any funds withheld under subsection (b) from apportionment to any State on or before September 30, 2003, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

''(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 2003.—No funds withheld under this section from apportionment to any State after September 30, 2003, shall be available for apportionment to the State.

''(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (b) from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State has in effect a law described in subsection (b)(3), the Secretary shall, on the first day on which the State has in effect such a law, apportion to the State the funds withheld under subsection (b) that remain available for apportionment to the State.

''(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

''(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

''(B) TREATMENT OF CERTAIN FUNDS.—Sums not obligated at the end of the period referred to in subparagraph (A) shall—

''(i) lapse; or

''(ii) in the case of funds apportioned under section 104(b)(1)(A), lapse and be made available by the Secretary for projects in accordance with section 118.

''(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (b) from apportionment are available for apportionment to a State under paragraph (1)(A), the State does not have in effect a law described in subsection (b)(3), the funds shall—

''(A) lapse; or

''(B) in the case of funds withheld from apportionment under section 104(b)(1)(A), lapse and be made available by the Secretary for projects in accordance with section 118.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 153 the following:

''154. Open container requirements.''.

DOMENICI (AND BINGAMAN) AMENDMENT NO. 1698

Mr. DOMENICI (for himself and Mr. BINGAMAN) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 337, after line 6, the chapter analysis for Chapter 5 of Title 23, United States Code is amended by striking ''501. Definition of Safety.'' and inserting ''501. Definitions''.

On page 338, strike lines 2 through 8, and insert the following:

''§ 501. DEFINITIONS

''In this chapter:

''(1) SAFETY.—The term 'safety' includes highway and traffic safety systems, research, and development relating to vehicle, highway, driver, passenger, bicyclist, and pedestrian characteristics, accident investigations, communications, emergency medical care, and transportation of the injured.

''(2) FEDERAL LABORATORY.—The term 'Federal laboratory' includes a government-owned, government-operated laboratory and a government-owned, contractor-operated laboratory.

BINGAMAN (AND DOMENICI) AMENDMENTS NOS. 1699–1701

Mr. BINGAMAN (for himself and Mr. DOMENICI) proposed three amendments to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

AMENDMENT NO. 1699

On page 310, strike lines 9 through 17, and insert the following:

''§ 5211. Transactional authority

''To further the objectives of this chapter, the Secretary may make grants to, and enter into contracts, cooperative agreements, and other transactions with—

''(1) any person or any agency or instrumentality of the United States;

''(2) any unit of State or local government;

''(3) any educational institution;

''(4) any Federal laboratory; and

''(5) any other entity.''

AMENDMENT NO. 1700

On page 312, strike line 20 and all that follows through page 313, line 2, and insert the following:

''(B) to promote the exchange of information on transportation-related research and development activities among the operating elements of the Department, other Federal departments and agencies, Federal laboratories, State and local governments, colleges, and universities, industry, and other private and public sector organizations engaged in the activities;''.

AMENDMENT NO. 1701

On page 317, strike lines 1 through 6, and insert the following:

''(2) identify and apply innovative research performed by the Federal Government, Federal laboratories, academia, and the private sector to the intermodal and multimodal transportation research, development, and deployment needs of the Department and the transportation enterprise of the United States;''.

CHAFEE (AND OTHERS) AMENDMENT NO. 1702

Mr. CHAFEE (for himself, Mr. WYDEN, and Mr. GRAHAM) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 162, after the end of line 25, insert the following:

''(5) CONCURRENT PROCESSING.—The term, 'concurrent processing' means to the fullest extent practicable, and to the extent otherwise required, agencies shall prepare environmental impact statements and environmental assessments concurrently with and integrated with environmental analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental review laws and executive orders.''

On page 163, lines 10–12, strike ''with the requirements'' through the end of the sentence, and insert ''for surface transportation projects at the earliest possible time, including, to the extent appropriate, at the planning stage with the agreement of the State transportation agencies and the cooperating agencies.''

On page 163, lines 17–18, strike ''with the planning, predesign stage, and decision making''.

On page 164, line 2, strike ''initiatives.'' and insert ''initiatives, economic development and transportation initiatives.''

On page 164, lines 17–18, strike ''with the transportation planning and decisionmaking of the'', and insert ''for surface transportation projects by''.

On page 166, line 2, delete ''(rather than sequential)''.

On page 167, line 7, insert ''and the public on request'' after ''cooperating agencies''.

On page 168, line 11, strike ''grant'', and insert ''take action on''.

On page 169, after the end of line 10, insert the following:

''and assure early consideration of alternatives to a proposed project, including alternatives that address transportation demand consistent with 23 U.S.C. 134(i)(3).''

On page 169, strike lines 20 through page 170, line 2.

On page 170, line 15, after ''agreement'', insert ''that has been developed with public involvement''.

On page 172, line 3, after ''APPROACHES.—'', insert ''In addition to existing formal public participation opportunities,''.

On page 172, line 5, after ''used, insert '', to the extent appropriate,''.

On page 174, line 19, after ''subsection (a)'', insert ''consistent with Part 1501, et seq., of Title 40 of the Code of Federal Regulations.''

On page 175, line 6, insert the following new subsection and redesignate the following subsections accordingly:

(c) Section 112 of title 23, United States Code, is amended by adding at the end the following new subsection:

''(g) SELECTION PROCESS.—It shall not be considered to be a conflict of interest, as defined under section 1.33 of title 23, Code of Federal Regulations, for a State to procure, under a single contract, the services of a consultant to prepare any environmental assessments or analyses required, including environmental impact statements, as well as subsequent engineering and design work on the same project, provided that the State has conducted an independent multi-disciplined review that assesses the objectivity of any analysis, environmental assessment or environmental impact statement prior to its submission to the agency that approves the project.''

HUTCHISON AMENDMENT NO. 1703

Mrs. HUTCHISON proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

At the end of line 16, page 397 insert:

''(3) CONTINUATION OF PARTNERSHIP AGREEMENTS.—The Secretary shall continue through to completion public/private partnership agreements previously executed to promote the integration of surface transportation management systems, including the integration of highway, transit, railroad and emergency management systems.''

ABRAHAM (AND LEVIN) AMENDMENT NO. 1704

Mr. ABRAHAM (for himself and Mr. LEVIN) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 136, after line 22, add the following:

SEC. 11 . AMBASSADOR BRIDGE ACCESS, DETROIT, MICHIGAN.

(a) IN GENERAL.—Notwithstanding section 129 of title 23, United States Code, or any other provision of law, improvements to access roads and construction of access roads, approaches, and related facilities (such as signs, lights, and signals) necessary to connect the Ambassador Bridge in Detroit, Michigan, to the Interstate System shall be eligible for funds apportioned under paragraphs (1)(C) and (3) of section 104(b) of that title.

(b) USE OF FUNDS.—Funds described in subsection (a) shall not be used for any improvements to, or construction of, the bridge itself.

INHOFE AMENDMENT NO. 1705

Mr. CHAFEE (for Mr. INHOFE) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 135, strike lines 2 through 5 and insert the following:

''aid highway funds, or reasonably expected or intended to be part of 1 or more such projects, shall be performed under a contract awarded in accordance with subparagraph (A) unless the simplified acquisition procedures of the Federal Acquisition Regulations apply.''

On page 135, line 7, insert '', or salary limitation in consistent with the Federal Acquisition Regulations,'' after ''restriction''.

On page 135, line 15, strike ''cost principles'' and insert ''procedures, cost principles,'' after ''the''.

On page 135, line 24, strike ''process, contracting based on'' and insert ''procedures of''.

On page 136, line 12, strike ''process'' and insert ''procedure''.

ABRAHAM (AND LEVIN) AMENDMENT NO. 1706

Mr. CHAFEE (for Mr. ABRAHAM, for himself and Mr. LEVIN) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 183 at the end of line 23 insert the following:

(5) in subsection (b)(9), by striking ''section 108(f)(1)(A) (other than clauses (xii) and (xvi)) of the Clean Air Act'' and inserting ''section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A))'';

MURKOWSKI (AND STEVENS) AMENDMENT NO. 1707

(Ordered to lie on the table.)

Mr. MURKOWSKI (for himself and Mr. STEVENS) submitted an amendment intended to be proposed by them to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 269, line 2, insert ''(a) IN GENERAL.—'' before ''Section''.

On page 278, between lines 14 and 15, insert the following:

(b) REDUNDANT METROPOLITAN TRANSPORTATION PLANNING REQUIREMENTS.—

(1) FINDING.—Congress finds that certain major investment study requirements under section 450.318 of title 23, Code of Federal Regulations, are redundant to the planning and project development processes required under other provisions in titles 23 and 49, United States Code.

(2) STREAMLINING.—

(A) IN GENERAL.—The Secretary shall streamline the Federal transportation planning and NEPA decision process requirements for all transportation improvements supported with Federal surface transportation funds or requiring Federal approvals, with the objective of reducing the number of documents required and better integrating required analyses and findings wherever possible.

(B) REQUIREMENTS.—The Secretary shall amend regulations as appropriate and develop procedures to—

(i) eliminate, within six months of the date of enactment of this section, the major investment study under section 450.318 of title 23, Code of Federal Regulations, as a stand-alone requirement independent of other transportation planning requirements, and integrate those components of the major investment study procedure which are not duplicated elsewhere with other transportation planning requirements;

(ii) eliminate stand-alone report requirements wherever possible;

(iii) prevent duplication by integrating planning and transportation processes under the National Environmental Policy Act of 1969 by drawing on the products of the planning process in the completion of all environmental and other project development analyses;

(iv) reduce project development time by achieving to the maximum extent practical a single public interest decision process for Federal environmental analyses and clearances; and

(v) expedite and support all phases of decisionmaking by encouraging and facilitating the early involvement of metropolitan planning organizations, State departments of transportation, transit operators, and Federal and State environmental resource and permit agencies throughout the decisionmaking process.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall affect the responsibility of the Secretary of conform review requirements for transit projects under the National Environmental Policy Act of 1969 to comparable requirements under such Act applicable to highway projects.

MCCONNELL (AND OTHERS) AMENDMENT NO. 1708

Mr. MCCONNELL (for himself, Mr. GORTON, Mr. SESSIONS, Mr. HUTCHINSON, Mr. ASHCROFT, Mr. HELMS, and Mr. SMITH of New Hampshire) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

Strike section 1111 and insert the following:

SEC. 1111. EMERGING BUSINESS ENTERPRISE PROGRAM.

(a) DEFINITIONS.—In this section:

(1) EMERGING BUSINESS ENTERPRISE.—The term ''emerging business enterprise'' means a business that—

(A) has annual gross receipts over the preceding 3 fiscal years of less than $8,400,000 (as adjusted by the Secretary to reflect changes in the Consumer Price Index for all-urban consumers published by the Department of Labor);

(B) has not been in business for more than 9 years; and

(C) in response to a survey conducted under subsection (c)(2), has indicated an interest in participating in the construction of a project funded, in whole or in part, under a Federal surface transportation law.

(2) FEDERAL SURFACE TRANSPORTATION LAW.—The term ''Federal surface transportation law'' means the surface transportation provisions of this Act and titles 23 and 49, United States Code.

(3) PREFERENTIAL TREATMENT.—The term ''preferential treatment'' means the grant of an advantage to any person, including—

(A) any set-aside of any contract or subcontract;

(B) any numerical goal, quota, timetable, benchmark, or other numerical objective, for the award of a contract or subcontract; or

(C) any bid preference, cost preference, or price preference, including a bonus and an evaluation credit.

(4) RECRUIT; RECRUITMENT.—

(A) IN GENERAL.—The term ''recruit'' or ''recruitment'' refers to distributing or disseminating information about an opportunity to bid for a Federal surface transportation contract or subcontract.

(B) EXCLUSION.—The term ''recruit'' or ''recruitment'' does not refer to preferential treatment.

(5) STANDARD INDUSTRIAL CLASSIFICATION CODE.—The term ''standard industrial classification code'' means a 4-digit code assigned to an industrial category in the Standard Industrial Classification Manual published by the Office of Management and Budget.

(6) STATE.—The term ''State'' means any State or territory of the United States, any political division of any such State or territory, or any interstate entity, if the State, territory, political subdivision, or interstate entity receives financial assistance from the Federal Government under Federal surface transportation law.

(7) TARGETED AREA.—The term ''targeted area'' means—

(A) any population census tract with a poverty rate of not less than 20 percent;

(B) a population census tract with a population of less than 2,000 if—

(i) more than 75 percent of the tract is zoned for commercial or industrial use; and

(ii) the tract is contiguous to 1 or more other population census tracts that meet the requirement of subparagraph (A) without regard to this subparagraph; and

(C) any empowerment zone or enterprise community (and any supplemental zone designated on December 21, 1994).

(8) TARGETED BUSINESS.—The term ''targeted business'' means an emerging business enterprise that—

(A) is physically located in a targeted area; or

(B) employs a workforce that is at least 50 percent composed of residents of a targeted area.

(b) POLICY.—It is the policy of the United States to provide and encourage the maximum practicable opportunity for emerging business enterprises, including targeted businesses and emerging business enterprises owned by members of a minority group based on race, color, or national origin (referred to in this section as ''minorities'') and women, to compete for prime contracts and subcontracts funded under Federal surface transportation law, consistent with the fifth and 14th amendments to the Constitution.

(c) REQUIREMENT FOR EMERGING BUSINESS ENTERPRISE DEVELOPMENT AND OUTREACH.—

(1) IN GENERAL.—Each State that receives funds made available under Federal surface transportation law shall engage in emerging business enterprise development and outreach to implement the policy set forth in subsection (b), including special recruitment efforts for targeted businesses and for emerging business enterprises owned by minorities and women, in carrying out programs under Federal surface transportation law.

(2) METHODS OF EMERGING BUSINESS ENTERPRISE DEVELOPMENT AND OUTREACH.—The required emerging business enterprise development and outreach under paragraph (1) shall include—

(A) outreach to the emerging business enterprises in the construction industry in the State, and the recruitment of such enterprises, including—

(i) not less often than annually, a survey of construction contractors and subcontractors within its jurisdiction to determine—

(I) the number and identity of such construction contractors and subcontractors within its jurisdiction that are emerging business enterprises;

(II) the standard industrial classification code that identifies the principal line of business of the emerging business enterprises; and

(III) whether the construction contractor or subcontractor is a targeted business or owned, in whole or in part, by a woman or a minority;

(ii) not less often than annually, publication of a directory of the emerging business enterprises within its jurisdiction, including relevant information about the enterprises such as—

(I) name, address, and telephone and fax numbers; and

(II) the standard industrial classification code that identifies the principal line of business of the emerging business enterprises;

(iii) each time that the State solicits bids or proposals for construction of a project funded, in whole or in part, under Federal surface transportation law—

(I) distribution of information on the project in a manner that is reasonably calculated to reach emerging business enterprises, including posting such opportunities in the Commerce Business Daily and the Pro-Net System of the Small Business Administration;

(II) targeted recruitment of targeted businesses and of emerging business enterprises owned by minorities and women; and

(III) designation of a location at which all emerging business enterprises may have access to the plans and specifications for the project at no cost during normal business hours; and

(iv) on a regular basis, provision of opportunities for emerging business enterprises interested in performing prime contracts or subcontracts funded under Federal surface transportation law to meet and interact with other construction companies and with equipment dealers and material suppliers that support the construction industry in the State;

(B) professional and technical services and assistance with any requirements for prequalification or bonding, including—

(i) not less often than annually, publication of a directory of the bonding companies that service the construction industry in the State;

(ii) on a regular basis, provision of opportunities for emerging business enterprises to meet and interact with the bonding companies that service the construction industry in the State;

(iii) on a regular basis, offering of seminars and other educational programs on—

(I) the purposes and criteria for prequalification and bonding; and

(II) the steps necessary to qualify a firm for bonding or to increase the firm's bonding limit; and

(iv) on a regular basis, provision of information to emerging business enterprises regarding programs to guarantee a surety against loss resulting from the breach of the terms of a bond by an emerging business enterprise, including the program carried out by the Small Business Administration under part B of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694a et seq.);

(C) professional and technical services and assistance with risk management and any insurance that the State may encourage or require contractors or subcontractors to carry, including—

(i) not less often than annually, publication of a directory of the insurance companies that service the construction industry in the State;

(ii) on a regular basis, provision of opportunities for emerging business enterprises to meet and interact with the insurance companies that service the construction industry in the State; and

(iii) on a regular basis, offering of seminars and other educational programs on—

(I) risk management; and

(II) the steps necessary to obtain appropriate insurance, including any insurance that the State may require;

(D) professional and technical services and assistance with financial matters, including—

(i) not less often than annually, publication of a directory of the financial institutions that service the construction industry in the State;

(ii) on a regular basis, provision of opportunities for emerging business enterprises to meet and interact with the financial institutions that service the construction industry in the State; and

(iii) on a regular basis, offering of seminars and other educational programs on construction financing and the steps necessary to qualify a firm for a line of credit or increase the firm's credit limit; and

(E) professional and technical services and assistance with general business management, estimating, bidding, and construction means and methods, including—

(i) on a regular basis, offering of seminars and other educational programs on general business management, estimating, bidding, and construction means and methods; and

(ii) on a regular basis, distribution to all emerging business enterprises of information on seminars and other educational programs offered by other entities on general business management, estimating, bidding, and construction means and methods.

(3) FUNDING OF EMERGING BUSINESS DEVELOPMENT AND OUTREACH.—Subject to the approval of the Secretary, each State may use funds made available under this Act, and section 140 of title 23, United States Code, to fund the emerging business enterprise program required under this section.

(d) REQUIREMENT FOR REVIEW OF CONSTRUCTION PLANS.—Each State shall conduct a periodic review of its construction plans and specifications to the extent necessary to—

(1) ensure that the plans and specifications reflect the State's actual requirements; and

(2) determine the feasibility of subdividing contracts to allow more opportunities for emerging business enterprises, particularly those owned by minorities and women, to compete for projects funded, in whole or in part, under Federal surface transportation law.

(e) COORDINATION BETWEEN SECRETARY AND STATE.—The Secretary shall coordinate with each State to help eliminate any duplication between—

(1) the emerging business enterprise program of the State under this section; and

(2) other Federal programs, such as programs carried out under the Small Business Act (15 U.S.C. 631 et seq.).

(f) REQUIREMENT FOR REVIEW OF EMERGING BUSINESS ENTERPRISE PROGRAM.—

(1) REVIEW BY STATE.—Each State shall conduct a periodic review of the implementation and impact of its emerging business enterprise development and outreach efforts under this section, including an assessment of the impact of the efforts on the overall competitiveness of emerging business enterprises owned by minorities and women through consideration of factors such as—

(A) working capital;

(B) net profit; and

(C) bonding capacity.

(2) REVIEW BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct a biennial review and publish findings and conclusions on the nationwide impact of the emerging business enterprise development and outreach efforts under this section, including an assessment of the impact of the efforts on the overall competitiveness of emerging business enterprises owned by minorities and women through consideration of relevant factors, including the factors specified in paragraph (1).

(g) PROHIBITION ON DISCRIMINATION OR PREFERENTIAL TREATMENT.—

(1) IN GENERAL.—No person in the United States shall, on the basis of race, color, national origin, or sex, be subjected to discrimination or provided preferential treatment under any project (carried out directly or by grant or contract) receiving Federal financial assistance under this Act or any amendment made by this Act.

(2) REQUIREMENT FOR EXPRESS POLICY STATEMENT.—Each time that the State solicits bids or proposals for construction of a project funded under Federal surface transportation law, the solicitation shall expressly state in prominent and boldface lettering that—

(A) ''Emerging business enterprises owned by minorities and women are expressly encouraged to submit bids for contracts and subcontracts.''; and

(B) ''Federal law expressly prohibits the government from discriminating against, or granting or requiring preferential treatment to or for, any person, based on race, color, national origin, or sex, in the award of any contract or subcontract funded under Federal surface transportation law.''.

(h) STATUTORY CONSTRUCTION.—Nothing in subsection (b), (c), or (g) shall be construed—

(1) in any way to limit or restrain the power of the judicial branch to order remedial relief to victims of discrimination under the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.) or any other Federal statute;

(2) to prohibit the Federal Government or any State or local government, consistent with subsection (g), from—

(A) recruiting emerging business enterprises owned by women and minorities to bid for contracts or subcontracts;

(B) requiring or encouraging any contractor or subcontractor to recruit emerging business enterprises owned by women and minorities to bid for contracts or subcontracts; or

(C) establishing overall annual goals for the participation of emerging business enterprises, including emerging business enterprises owned by minorities and women, in the emerging business enterprise development and outreach under subsection (c); or

(3) to create any private right of action based on the requirements set forth in subsection (c).

CAMPBELL AMENDMENTS NOS. 1709–1710

(Ordered to lie on the table.)

Mr. CAMPBELL submitted two amendments intended to be proposed by him to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

AMENDMENT NO. 1709

On page 52, strike line 16 and insert the following:

tribe. Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this chapter for Indian reservation roads and bridges to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to transportation planning, research, engineering, or construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribal government, shall, at the option of an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), be made available to the Indian tribe under, and shall be used in a manner governed solely by, the flexible and consolidated authorities accorded Indian tribes under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) without regard to the agency or office of the Bureau of Indian Affairs within which the programs, services, functions, and activities, or portions thereof, are performed.'';

AMENDMENT NO. 1710

On page 49, strike lines 11 through 17 and insert the following:

''(k) USE OF FEDERAL LANDS HIGHWAYS PROGRAM FUNDS.—

''(1) IN GENERAL.—Subject to the other provisions of this subsection and notwithstanding any other provision of law, the funds made available to carry out the Federal lands highways program under section 204 may be used to pay the non-Federal share of the cost of any project that is funded under section 104 and that provides access to or within Federal or Indian lands.

''(2) ALLOCATION.—All funds made available for Indian reservation roads and bridges under this title shall be allocated among Indian tribes—

''(A) for each of fiscal years 1998 and 1999, in accordance with the relative needs formula used to allocate such funds for fiscal year 1997; and

''(B) for fiscal year 2000 and each subsequent fiscal year, in accordance with a formula with a formula established by the Secretary of the Interior under a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

''(3) REGULATIONS.—

''(A) IN GENERAL.—Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall issue regulations governing the Indian reservation roads and bridges program, and establishing the funding formula for fiscal year 2000 and each subsequent fiscal year under paragraph (2)(B), in accordance with a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

''(B) TIMING.—The regulations shall—

''(i) be promulgated in final form not later than April 1, 1999; and

''(ii) take effect not later than October 1, 1999.

''(4) NEGOTIATED RULEMAKING COMMITTEE.—In establishing a negotiated rulemaking committee to carry out paragraph (3)(A), the Secretary of the Interior shall—

''(A) apply the procedures under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States; and

''(B) ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes.

''(5) BASIS FOR FUNDING FORMULA.—The funding formula established for fiscal year 2000 and each subsequent fiscal year under paragraph (2)(B) shall be based on factors that reflect—

''(A) the relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance; and

''(B) the relative administrative capacities of, and challenges faced by, various Indian tribes, including geographic isolation and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources.''.

FAIRCLOTH AMENDMENT NO. 1711

(Ordered to lie on the table.)

Mr. FAIRCLOTH submitted an amendment intended to be proposed by him to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

At the appropriate place, insert the following:

(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out section 104(d)(2) of title 23, United States Code, $40,000,000 for each of fiscal years 1998 through 2003.

ABRAHAM AMENDMENT NO. 1712

(Ordered to lie on the table.)

Mr. ABRAHAM submitted an amendment intended to be proposed by him to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

S. 1173

At the appropriate place, add the following:

TITLE ___—AMERICAN COMMUNITY RENEWAL

SEC. ___00. SHORT TITLE, TABLE OF CONTENTS, FINDINGS, AND PURPOSE.

(a) SHORT TITLE.—This title may be cited as the ''American Community Renewal Act of 1998''.

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

(c) FINDINGS.—The Congress makes the following findings:

(1) Many of the Nation's urban centers are places with high levels of poverty, high rates of welfare dependency, high crime rates, and joblessness.

(2) Federal tax incentives and regulatory reforms can encourage economic growth, job

creation, and small business formation in many urban centers.

(3) Encouraging private sector investment in America's economically distressed urban and rural areas is essential to breaking the cycle of poverty and the related ills of crime, drug abuse, illiteracy, welfare dependency, and unemployment.

(d) PURPOSE.—The purpose of this title is to increase job creation, small business expansion and formation, and homeownership, and to foster moral renewal, in economically depressed areas by providing Federal tax incentives, regulatory reforms, and homeownership incentives.

Subtitle A—Designation and Evaluation of Renewal Communities

SEC. ___01. SHORT TITLE.

This subtitle may be cited as the ''Renewing American Communities Act of 1998''.

SEC. ___02. STATEMENT OF PURPOSE.

It is the purpose of this subtitle to provide for the establishment of renewal communities in order to stimulate the creation of new jobs, particularly for disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas primarily by providing or encouraging—

(1) tax relief at the Federal, State, and local levels;

(2) regulatory relief at the Federal, State, and local levels; and

(3) improved local services and an increase in the economic stake of renewal community residents in their own community and its development, particularly through the increased involvement of private, local, and neighborhood organizations.

SEC. ___03. DESIGNATION OF RENEWAL COMMUNITIES.

(a) IN GENERAL.—Chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:

''Subchapter X—Renewal Communities

''Part I. Designation.''

''PART I—DESIGNATION

''Sec. 1400D. Designation of Renewal Communities.

''SEC. 1400D. DESIGNATION OF RENEWAL COMMUNITIES.

''(a) DESIGNATION.—

''(1) DEFINITIONS.—For purposes of this title, the term 'renewal community' means any area—

''(A) which is nominated by one or more local governments and the State or States in which it is located for designation as a renewal community (hereafter in this section referred to as a 'nominated area'), and

''(B) which the Secretary of Housing and Urban Development, after consultation with—

''(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury; the Director of the Office of Management and Budget; and the Administrator of the Small Business Administration, and

''(ii) in the case of an area on an Indian reservation, the Secretary of the Interior,

designates as a renewal community.

''(2) NUMBER OF DESIGNATIONS.—

''(A) IN GENERAL.—The Secretary of Housing and Urban Development may designate not more than 50 nominated areas as renewal communities.

''(B) ADDITIONAL DESIGNATIONS TO REPLACE REVOKED DESIGNATIONS.—

''(i) IN GENERAL.—The Secretary of Housing and Urban Development may designate one additional area under subparagraph (A) to replace each area for which the designation is revoked under subsection (b)(2), but in no event may more than 50 areas designated under this subsection bear designations as renewal communities at any time.

''(ii) EXTENSION OF TIME LIMIT ON DESIGNATIONS.—In the case of any designation made under this subparagraph, paragraph (4)(B) shall be applied by substituting '36-month' for '24-month'.

''(3) AREAS DESIGNATED BASED ON DEGREE OF POVERTY, ETC.—

''(A) IN GENERAL.—Except as otherwise provided in this section, the nominated areas designated as renewal communities under this subsection shall be those nominated areas with the highest average ranking with respect to the criteria described in subparagraphs (C), (D), and (E) of subsection (c)(3). For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area which exceeds such criterion by the greatest amount given the highest ranking.

''(B) EXCEPTION WHERE INADEQUATE COURSE OF ACTION, ETC.—An area shall not be designated under subparagraph (A) if the Secretary of Housing and Urban Development determines that the course of action described in subsection (d)(2) with respect to such area is inadequate.

''(C) PRIORITY FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES WITH RESPECT TO FIRST HALF OF DESIGNATIONS.—With respect to the first 25 designations made under this section, the nominated areas designated as renewal communities shall be chosen first from nominated areas which are enterprise zones or empowerment communities (and are otherwise eligible for designation under this section), and then from other nominated areas which are so eligible.

''(4) LIMITATION ON DESIGNATIONS.—

''(A) PUBLICATION OF REGULATIONS.—The Secretary of Housing and Urban Development shall prescribe by regulation no later than 4 months after the date of the enactment of this section, after consultation with the officials described in paragraph (1)(B)—

''(i) the procedures for nominating an area under paragraph (1)(A),

''(ii) the parameters relating to the size and population characteristics of a renewal community, and

''(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

''(B) TIME LIMITATIONS.—The Secretary of Housing and Urban Development may designate nominated areas as renewal communities only during the 24-month period beginning on the first day of the first month following the month in which the regulations described in subparagraph (A) are prescribed.

''(C) PROCEDURAL RULES.—The Secretary of Housing and Urban Development shall not make any designation of a nominated area as a renewal community under paragraph (2) unless—

''(i) the local governments and the State in which the nominated area is located have the authority—

''(I) to nominate such area for designation as a renewal community,

''(II) to make the State and local commitments described in subsection (d), and

''(III) to provide assurances satisfactory to the Secretary of Housing and Urban Development that such commitments will be fulfilled,

''(ii) a nomination regarding such area is submitted in such a manner and in such form, and contains such information, as the Secretary of Housing and Urban Development shall by regulation prescribe, and

''(iii) the Secretary of Housing and Urban Development determines that any information furnished is reasonably accurate.

''(5) NOMINATION PROCESS FOR INDIAN RESERVATIONS.—For purposes of this subchapter, in the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be treated as being both the State and local governments with respect to such area.

''(b) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

''(1) IN GENERAL.—Any designation of an area as a renewal community shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

''(A) December 31 of the 7th calendar year following the calendar year in which such date occurs,

''(B) the termination date designated by the State and local governments in their nomination pursuant to subsection (a)(4)(C)(ii), or

''(C) the date the Secretary of Housing and Urban Development revokes such designation under paragraph (2).

''(2) REVOCATION OF DESIGNATION.—The Secretary of Housing and Urban Development may, after—

''(A) consultation with the officials described in subsection (a)(1)(B), and

''(B) a hearing on the record involving officials of the State or local government involved (or both, if applicable),

revoke the designation of an area if the Secretary of Housing and Urban Development determines that the local government or State in which the area is located is not complying substantially with the State or local commitments, respectively, described in subsection (d).

''(c) AREA AND ELIGIBILITY REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary of Housing and Urban Development may designate any nominated area as a renewal community under subsection (a) only if the area meets the requirements of paragraphs (2) and (3) of this subsection.

''(2) AREA REQUIREMENTS.—A nominated area meets the requirements of this paragraph if—

''(A) the area is within the jurisdiction of a local government,

''(B) the boundary of the area is continuous, and

''(C) the area—

''(i) has a population, as determined by the most recent census data available, of at least—

''(I) 4,000 if any portion of such area is located within a metropolitan statistical area (within the meaning of section 143(k)(2)(B)) which has a population of 50,000 or greater, or

''(II) 1,000 in any other case, or

''(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

''(3) ELIGIBILITY REQUIREMENTS.—A nominated area meets the requirements of this paragraph if the State and the local governments in which it is located certify (and the Secretary of Housing and Urban Development, after such review of supporting data as he deems appropriate, accepts such certification) that—

''(A) the area is one of pervasive poverty, unemployment, and general distress,

''(B) the unemployment rate in the area, as determined by the appropriate available data, was at least 1½ times the national unemployment rate for the period to which such data relate,

''(C) the poverty rate (as determined by the most recent census data available) for each population census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was at least 20 percent for the period to which such data relate, and

''(D) at least 70 percent of the households living in the area have incomes below 80 percent of the median income of households within the jurisdiction of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

''(4) CONSIDERATION OF HIGH INCIDENCE OF CRIME.—The Secretary of Housing and Urban Development shall take into account, in selecting nominated areas for designation as renewal communities under this section, the extent to which such areas have a high incidence of crime.

''(d) REQUIRED STATE AND LOCAL COMMITMENTS.—

''(1) IN GENERAL.—The Secretary of Housing and Urban Development may designate any nominated area as a renewal community under subsection (a) only if—

''(A) the local government and the State in which the area is located agree in writing that, during any period during which the area is a renewal community, such governments will follow a specified course of action which meets the requirements of paragraph (2) and is designed to reduce the various burdens borne by employers or employees in such area, and

''(B) the economic growth promotion requirements of paragraph (3) are met.

''(2) COURSE OF ACTION.—

''(A) IN GENERAL.—A course of action meets the requirements of this paragraph if such course of action is a written document, signed by a State (or local government) and neighborhood organizations, which evidences a partnership between such State or government and community-based organizations and which commits each signatory to specific and measurable goals, actions, and timetables. Such course of action shall include at least five of the following:

''(i) A reduction of tax rates or fees applying within the renewal community.

''(ii) An increase in the level of efficiency of local services within the renewal community.

''(iii) Crime reduction strategies, such as crime prevention (including the provision of such services by nongovernmental entities).

''(iv) Actions to reduce, remove, simplify, or streamline governmental requirements applying within the renewal community.

''(v) Involvement in the program by private entities, organizations, neighborhood organizations, and community groups, particularly those in the renewal community, including a commitment from such private entities to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents from the renewal community.

''(vi) State or local income tax benefits for fees paid for services performed by a nongovernmental entity which were formerly performed by a governmental entity.

''(vii) The gift (or sale at below fair market value) of surplus realty (such as land, homes, and commercial or industrial structures) in the renewal community to neighborhood organizations, community development corporations, or private companies.

''(B) RECOGNITION OF PAST EFFORTS.—For purposes of this section, in evaluating the course of action agreed to by any State or local government, the Secretary of Housing and Urban Development shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

''(3) ECONOMIC GROWTH PROMOTION REQUIREMENTS.—The economic growth promotion requirements of this paragraph are met with respect to a nominated area if the local government and the State in which such area is located certify in writing that such government and State, respectively, have repealed or otherwise will not enforce within the area, if such area is designated as a renewal community—

''(A) licensing requirements for occupations that do not ordinarily require a professional degree,

''(B) zoning restrictions on home-based businesses which do not create a public nuisance,

''(C) permit requirements for street vendors who do not create a public nuisance,

''(D) zoning or other restrictions that impede the formation of schools or child care centers, and

''(E) franchises or other restrictions on competition for businesses providing public services, including but not limited to taxicabs, jitneys, cable television, or trash hauling,

except to the extent that such regulation of businesses and occupations is necessary for and well-tailored to the protection of health and safety.

''(e) COORDINATION WITH TREATMENT OF EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.—For purposes of this title, if there are in effect with respect to the same area both—

''(1) a designation as a renewal community, and

''(2) a designation as an empowerment zone or enterprise community,

both of such designations shall be given full effect with respect to such area.

''(f) DEFINITIONS.—For purposes of this subchapter—

''(1) GOVERNMENTS.—If more than one government seeks to nominate an area as a renewal community, any reference to, or requirement of, this section shall apply to all such governments.

''(2) STATE.—The term 'State' includes Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

''(3) LOCAL GOVERNMENT.—The term 'local government' means—

''(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State,

''(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development, and

''(C) the District of Columbia.''

SEC. ___04. EVALUATION AND REPORTING REQUIREMENTS.

Not later than the close of the fourth calendar year after the year in which the Secretary of Housing and Urban Development first designates an area as a renewal community under section 1400D of the Internal Revenue Code of 1986 (as added by this subtitle), and at the close of each fourth calendar year thereafter, such Secretary shall prepare and submit to the Congress a report on the effects of such designations in accomplishing the purposes of this subtitle.

SEC. ___05. INTERACTION WITH OTHER FEDERAL PROGRAMS.

(a) TAX REDUCTIONS.—Any reduction of taxes, with respect to any renewal community designated under section 1400D of the Internal Revenue Code of 1986 (as so added), under any plan of action under section 1400D(d) of such Code shall be disregarded in determining the eligibility of a State or local government for, or the amount or extent of, any assistance or benefits under any law of the United States (other than subchapter X of chapter 1 of such Code).

(b) COORDINATION WITH RELOCATION ASSISTANCE.—The designation of a renewal community under section 1400D of such Code (as so added) shall not—

(1) constitute approval of a Federal or Federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.)), or

(2) entitle any person displaced from real property located in such community to any rights or any benefits under such Act.

(c) RENEWAL COMMUNITIES TREATED AS LABOR SURPLUS AREAS.—Any area which is designated as a renewal community under section 1400D of such Code (as so added) shall be treated for all purposes under Federal law as a labor surplus area.

Subtitle B—Tax Incentives for Renewal Communities

SEC. ___11. TAX TREATMENT OF RENEWAL COMMUNITIES.

(a) IN GENERAL.—Subchapter X of chapter I of the Internal Revenue Code of 1986 (as added by subtitle A) is amended by adding at the end the following new parts:

''PART II—RENEWAL COMMUNITY CAPITAL GAIN

''Sec. 1400E. Renewal community capital gain.

''Sec. 1400F. Renewal community business defined.

''SEC. 1400E. RENEWAL COMMUNITY CAPITAL GAIN.

''(a) GENERAL RULE.—Gross income does not include any qualified capital gain recognized on the sale or exchange of a qualified community asset held for more than 5 years.

''(b) QUALIFIED COMMUNITY ASSET.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified community asset' means—

''(A) any qualified community stock,

''(B) any qualified community business property, and

''(C) any qualified community partnership interest.

''(2) QUALIFIED COMMUNITY STOCK.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'qualified community stock' means any stock in a domestic corporation if—

''(i) such stock is acquired by the taxpayer on original issue from the corporation solely in exchange for cash,

''(ii) as of the time such stock was issued, such corporation was a renewal community business (or, in the case of a new corporation, such corporation was being organized for purposes of being a renewal community business), and

''(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a renewal community business.

''(B) REDEMPTIONS.—The term 'qualified community stock' shall not include any stock acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of this section.

''(3) QUALIFIED COMMUNITY BUSINESS PROPERTY.—

''(A) IN GENERAL.—The term 'qualified community business property' means tangible property if—

''(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the renewal community took effect,

''(ii) the original use of such property in the renewal community commences with the taxpayer, and

''(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a renewal community business of the taxpayer.

''(B) SPECIAL RULE FOR SUBSTANTIAL IMPROVEMENTS.—

''(i) IN GENERAL.—The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as satisfied with respect to—

''(I) property which is substantially improved by the taxpayer, and

''(II) any land on which such property is located.

''(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of clause (i), property shall be treated as substantially improved by the taxpayer only if, during any 24-month period beginning after the date on which the designation of the renewal community took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of—

''(I) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or

''(II) $5,000.

''(C) LIMITATION ON LAND.—The term 'qualified community business property' shall not include land which is not an integral part of a renewal community business.

''(4) QUALIFIED COMMUNITY PARTNERSHIP INTEREST.—The term 'qualified community partnership interest' means any interest in a partnership if—

''(A) such interest is acquired by the taxpayer from the partnership solely in exchange for cash,

''(B) as of the time such interest was acquired, such partnership was a renewal community business (or, in the case of a new partnership, such partnership was being organized for purposes of being a renewal community business), and

''(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a renewal community business.

A rule similar to the rule of paragraph (2)(C) shall apply for purposes of this paragraph.

''(5) TREATMENT OF SUBSEQUENT PURCHASERS.—The term 'qualified community asset' includes any property which would be a qualified community asset but for paragraph (2)(A)(i), (3)(A)(ii), or (4)(A) in the hands of the taxpayer if such property was a qualified community asset in the hands of all prior holders.

''(6) 10-YEAR SAFE HARBOR.—If any property ceases to be a qualified community asset by reason of paragraph (2)(A)(iii), (3)(A)(iii), or (4)(C) after the 10-year period beginning on the date the taxpayer acquired such property, such property shall continue to be treated as meeting the requirements of such paragraph; except that the amount of gain to which subsection (a) applies on any sale or exchange of such property shall not exceed the amount which would be qualified capital gain had such property been sold on the date of such cessation.

''(7) TREATMENT OF COMMUNITY DESIGNATION TERMINATIONS.—The termination of any designation of an area as a renewal community shall be disregarded for purposes of determining whether any property is a qualified community asset.

''(c) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED CAPITAL GAIN.—Except as otherwise provided in this subsection, the term 'qualified capital gain' means any long-term capital gain recognized on the sale or exchange of a qualified community asset held for more than 5 years (determined without regard to any period before the designation of the renewal community).

''(2) CERTAIN GAIN ON REAL PROPERTY NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain which would be treated as ordinary income under section 1250 if section 1250 applied to all depreciation rather than the additional depreciation.

''(3) GAIN ATTRIBUTABLE TO PERIODS AFTER TERMINATION OF COMMUNITY DESIGNATION NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain attributable to periods after the termination of any designation of an area as a renewal community.

''(4) RELATED PARTY TRANSACTIONS.—The term 'qualified capital gain' shall not include any gain attributable, directly or indirectly, in whole or in part, to a transaction with a related person. For purposes of this paragraph, persons are related to each other if such persons are described in section 267(b) or 707(b)(1).

''(d) TREATMENT OF PASS-THRU ENTITIES.—

''(1) SALES AND EXCHANGES.—Gain on the sale or exchange of an interest in a pass-thru entity held by the taxpayer (other than an interest in an entity which was a renewal community business during substantially all of the period the taxpayer held such interest) for more than 5 years shall be treated as gain described in subsection (a) to the extent such gain is attributable to amounts which would be qualified capital gain on qualified community assets (determined as if such assets had been sold on the date of the sale or exchange) held by such entity for more than 5 years (determined without regard to any period before the date of the designation of the renewal community) and throughout the period the taxpayer held such interest. A rule similar to the rule of paragraph (2)(C) shall apply for purposes of the preceding sentence.

''(2) INCOME INCLUSIONS.—

''(A) IN GENERAL.—Any amount included in income by reason of holding an interest in a pass-thru entity (other than an entity which was a renewal community business during substantially all of the period the taxpayer held the interest to which such inclusion relates) shall be treated as gain described in subsection (a) if such amount meets the requirements of subparagraph (B).

''(B) REQUIREMENTS.—An amount meets the requirements of this subparagraph if—

''(i) such amount is attributable to qualified capital gain recognized on the sale or exchange by the pass-thru entity of property which is a qualified community asset in the hands of such entity and which was held by such entity for the period required under subsection (a), and

''(ii) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such asset and at all times thereafter before the disposition of such asset by such pass-thru entity.

''(C) LIMITATION BASED ON INTEREST ORIGINALLY HELD BY TAXPAYER.—Subparagraph (A) shall not apply to any amount to the extent such amount exceeds the amount to which subparagraph (A) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified community asset was acquired.

''(3) PASS-THRU ENTITY.—For purposes of this subsection, the term 'pass-thru entity' means—

''(A) any partnership,

''(B) any S corporation,

''(C) any regulated investment company, and

''(D) any common trust fund.

''(e) SALES AND EXCHANGES OF INTERESTS IN PARTNERSHIPS AND S CORPORATIONS WHICH ARE QUALIFIED COMMUNITY BUSINESSES.—In the case of the sale or exchange of an interest in a partnership, or of stock in an S corporation, which was a renewal community business during substantially all of the period the taxpayer held such interest or stock, the amount of qualified capital gain shall be determined without regard to—

''(1) any intangible, and any land, which is not an integral part of any qualified business entity (as defined in section 1400F(b)), and

''(2) gain attributable to periods before the designation of an area as a renewal community.

''(f) CERTAIN TAX-FREE AND OTHER TRANSFERS.—For purposes of this section—

''(1) IN GENERAL.—In the case of a transfer of a qualified community asset to which this subsection applies, the transferee shall be treated as—

''(A) having acquired such asset in the same manner as the transferor, and

''(B) having held such asset during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

''(2) TRANSFERS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any transfer—

''(A) by gift,

''(B) at death, or

''(C) from a partnership to a partner thereof, of a qualified community asset with respect to which the requirements of subsection (d)(2) are met at the time of the transfer (without regard to the 5-year holding requirement).

''(3) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

''SEC. 1400F. RENEWAL COMMUNITY BUSINESS DEFINED.

''(a) IN GENERAL.—For purposes of this part, the term 'renewal community business' means—

''(1) any qualified business entity, and

''(2) any qualified proprietorship.

Such term shall include any trades or businesses which would qualify as a renewal community business if such trades or businesses were separately incorporated. Such term shall not include any trade or business of producing property of a character subject to the allowance for depletion under section 611.

''(b) QUALIFIED BUSINESS ENTITY.— For purposes of this section, the term 'qualified business entity' means, with respect to any taxable year, any corporation or partnership if for such year—

''(1) every trade or business of such entity is the active conduct of a qualified business within a renewal community,

''(2) at least 80 percent of the total gross income of such entity is derived from the active conduct of such business,

''(3) substantially all of the use of the tangible property of such entity (whether owned or leased) is within a renewal community,

''(4) substantially all of the intangible property of such entity is used in, and exclusively related to, the active conduct of any such business,

''(5) substantially all of the services performed for such entity by its employees are performed in a renewal community,

''(6) at least 35 percent of its employees are residents of a renewal community,

''(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

''(8) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.

''(c) QUALIFIED PROPRIETORSHIP.—For purposes of this section, the term 'qualified proprietorship' means, with respect to any taxable year, any qualified business carried on

by an individual as a proprietorship if for such year—

''(1) at least 80 percent of the total gross income of such individual from such business is derived from the active conduct of such business in a renewal community,

''(2) substantially all of the use of the tangible property of such individual in such business (whether owned or leased) is within a renewal community,

''(3) substantially all of the intangible property of such business is used in, and exclusively related to, the active conduct of such business,

''(4) substantially all of the services performed for such individual in such business by employees of such business are performed in a renewal community,

''(5) at least 35 percent of such employees are residents of a renewal community,

''(6) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

''(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.

For purposes of this subsection, the term 'employee' includes the proprietor.

''(d) QUALIFIED BUSINESS.—For purposes of this section—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualified business' means any trade or business.

''(2) RENTAL OF REAL PROPERTY.—The rental to others of real property located in a renewal community shall be treated as a qualified business if and only if—

''(A) the property is not residential rental property (as defined in section 168(e)(2)), and

''(B) at least 50 percent of the gross rental income from the real property is from renewal community businesses.

''(3) RENTAL OF TANGIBLE PERSONAL PROPERTY.—The rental to others of tangible personal property shall be treated as a qualified business if and only if substantially all of the rental of such property is by renewal community businesses or by residents of a renewal community.

''(4) TREATMENT OF BUSINESS HOLDING INTANGIBLES.—The term 'qualified business' shall not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

''(5) CERTAIN BUSINESSES EXCLUDED.—The term 'qualified business' shall not include—

''(A) any trade or business consisting of the operation of any facility described in section 144(c)(6)(B), and

''(B) any trade or business the principal activity of which is farming (within the meaning of subparagraph (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of—

''(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer which are used in such a trade or business, and

''(ii) the aggregate value of assets leased by the taxpayer which are used in such a trade or business,

exceeds $500,000.

''(6) CONTROLLED GROUPS.—For purposes of paragraph (5)(B), all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single taxpayer.

''(e) NONQUALIFIED FINANCIAL PROPERTY.—For purposes of this section, the term 'nonqualified financial property' means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations; except that such term shall not include—

''(1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or

''(2) debt instruments described in section 1221(4).

''PART III—FAMILY DEVELOPMENT ACCOUNTS

''SEC. 1400G. FAMILY DEVELOPMENT ACCOUNTS FOR RENEWAL COMMUNITY EITC RECIPIENTS.

''(a) ALLOWANCE OF DEDUCTION.—

''(1) IN GENERAL.—There shall be allowed as a deduction—

''(A) in the case of a qualified individual, the amount paid in cash for the taxable year by such individual to any family development account for such individual's benefit, and

''(B) in the case of any person other than a qualified individual, the amount paid in cash for the taxable year by such person to any family development account for the benefit of a qualified individual.

No deduction shall be allowed under this paragraph for any amount deposited in a family development account under section 1400H (relating to demonstration program to provide matching amounts in renewal communities).

''(2) LIMITATION.—

''(A) IN GENERAL.—The amount allowable as a deduction to any individual for any taxable year by reason of paragraph (1)(A) shall not exceed the lesser of—

''(i) $2,000, or

''(ii) an amount equal to the compensation includible in the individual's gross income for such taxable year.

''(B) PERSONS DONATING TO FAMILY DEVELOPMENT ACCOUNTS OF OTHERS.—The amount allowable as a deduction to any person for any taxable year by reason of paragraph (1)(B) shall not exceed $1,000 with respect to any qualified individual.

''(3) SPECIAL RULES FOR CERTAIN MARRIED INDIVIDUALS.—

''(A) IN GENERAL.—In the case of an individual to whom this subparagraph applies for the taxable year, the limitation of subparagraph (A) of paragraph (2) shall be equal to the lesser of—

''(i) the dollar amount in effect under paragraph (2)(A)(i) for the taxable year, or

''(ii) the sum of—

''(I) the compensation includible in such individual's gross income for the taxable year, plus—

''(II) the compensation includible in the gross income of such individual's spouse for the taxable year reduced by the amount allowed as a deduction under paragraph (1) to such spouse for such taxable year.

''(B) INDIVIDUALS TO WHOM SUBPARAGRAPH (A) APPLIES.—Subparagraph (A) shall apply to any individual if—

''(i) such individual files a joint return for the taxable year, and

''(ii) the amount of compensation (if any) includible in such individual's gross income for the taxable year is less than the compensation includible in the gross income of such individual's spouse for the taxable year.

''(4) ROLLOVERS.—No deduction shall be allowed under this section with respect to any rollover contribution.

''(b) TAX TREATMENT OF DISTRIBUTIONS.—

''(1) INCLUSION OF AMOUNTS IN GROSS INCOME.—Except as otherwise provided in this subsection, any amount paid or distributed out of a family development account shall be included in gross income by the payee or distributee, as the case may be.

''(2) EXCLUSION OF QUALIFIED FAMILY DEVELOPMENT DISTRIBUTIONS.—Paragraph (1) shall not apply to any qualified family development distribution.

''(3) SPECIAL RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 408(d) shall apply for purposes of this section.

''(c) QUALIFIED FAMILY DEVELOPMENT DISTRIBUTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified family development distribution' means any amount paid or distributed out of a family development account which would otherwise be includible in gross income, to the extent that such payment or distribution is used exclusively to pay qualified family development expenses for the holder of the account or the spouse or dependent (as defined in section 152) of such holder.

''(2) QUALIFIED FAMILY DEVELOPMENT EXPENSES.—The term 'qualified family development expenses' means any of the following:

''(A) Qualified postsecondary educational expenses.

''(B) First-home purchase costs.

''(C) Qualified business capitalization costs.

''(D) Qualified medical expenses.

''(E) Qualified rollovers.

''(3) QUALIFIED POSTSECONDARY EDUCATIONAL EXPENSES.—

''(A) IN GENERAL.—The term 'qualified postsecondary educational expenses' means postsecondary educational expenses paid to an eligible educational institution.

''(B) POSTSECONDARY EDUCATIONAL EXPENSES.—The term 'postsecondary educational expenses' means tuition, fees, room, board, books, supplies, and equipment required for the enrollment or attendance of a student at an eligible educational institution.

''(C) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means the following:

''(i) INSTITUTION OF HIGHER EDUCATION.—An institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1), 1141(a)), as such sections are in effect on the date of the enactment of this section.

''(ii) POSTSECONDARY VOCATIONAL EDUCATION SCHOOL.—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of the enactment of this section.

''(D) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified postsecondary educational expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135.

''(4) FIRST-HOME PURCHASE COSTS.—

''(A) IN GENERAL.—The term 'first-home purchase costs' means qualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer.

''(B) QUALIFIED ACQUISITION COSTS.—The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

''(C) QUALIFIED PRINCIPAL RESIDENCE.—The term 'qualified principal residence' means a principal residence (within the meaning of section 1034), the qualified acquisition costs of which do not exceed 100 percent of the average area purchase price applicable to such residence (determined in accordance with paragraphs (2) and (3) of section 143(e)).

''(D) QUALIFIED FIRST-TIME HOMEBUYER.—

''(i) IN GENERAL.—The term 'qualified first-time homebuyer' means an individual if such individual (and, in the case of a married individual, the individual's spouse) has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subsection applies.

''(ii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subsection applies is entered into.

''(5) QUALIFIED BUSINESS CAPITALIZATION COSTS.—

''(A) IN GENERAL.—The term 'qualified business capitalization costs' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

''(B) QUALIFIED EXPENDITURES.—The term 'qualified expenditures' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

''(C) QUALIFIED BUSINESS.—The term 'qualified business' means any business that does not contravene any law or public policy (as determined by the Secretary).

''(D) QUALIFIED PLAN.—The term 'qualified plan' means a business plan which—

''(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity,

''(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and

''(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial adviser.

''(6) QUALIFIED MEDICAL EXPENSES.—The term 'qualified medical expenses' means any amount paid during the taxable year, not compensated for by insurance or otherwise, for medical care (as defined in section 213(d)) of the taxpayer, his spouse, or his dependent (as defined in section 152).

''(7) QUALIFIED ROLLOVERS.—The term 'qualified rollover' means any amount paid from a family development account of a taxpayer into another such account established for the benefit of—

''(A) such taxpayer, or

''(B) any qualified individual who is—

''(i) the spouse of such taxpayer, or

''(ii) any dependent (as defined in section 152) of the taxpayer.

Rules similar to the rules of section 408(d)(3) shall apply for purposes of this paragraph.

''(d) TAX TREATMENT OF ACCOUNTS.—

''(1) IN GENERAL.—Any family development account is exempt from taxation under this subtitle unless such account has ceased to be a family development account by reason of paragraph (2). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations).

''(2) LOSS OF EXEMPTION IN CASE OF PROHIBITED TRANSACTIONS.—For purposes of this section, rules similar to the rules of section 408(e) shall apply.

''(e) FAMILY DEVELOPMENT ACCOUNT.—For purposes of this title, the term 'family development account' means a trust created or organized in the United States for the exclusive benefit of a qualified individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

''(1) Except in the case of a qualified rollover (as defined in subsection (c)(7))—

''(A) no contribution will be accepted unless it is in cash, and

''(B) contributions will not be accepted for the taxable year in excess of $2,000 (determined without regard to any contribution made under section 1400H (relating to demonstration program to provide matching amounts in renewal communities)).

''(2) The trustee is a bank (as defined in section 408(n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

''(3) No part of the trust funds will be invested in life insurance contracts.

''(4) The interest of an individual in the balance in his account is nonforfeitable.

''(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

''(f) QUALIFIED INDIVIDUAL.—For purposes of this section, the term 'qualified individual' means, for any taxable year, an individual—

''(1) who is a bona fide resident of a renewal community throughout the taxable year, and

''(2) to whom a credit was allowed under section 32 for the preceding taxable year.

''(g) OTHER DEFINITIONS AND SPECIAL RULES.—

''(1) COMPENSATION.—The term 'compensation' has the meaning given such term by section 219(f)(1).

''(2) MARRIED INDIVIDUALS.—The maximum deduction under subsection (a) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.

''(3) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to a family development account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

''(4) EMPLOYER PAYMENTS.—For purposes of this title, any amount paid by an employer to a family development account shall be treated as payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income in the taxable year for which the amount was contributed, whether or not a deduction for such payment is allowable under this section to the employee.

''(5) ZERO BASIS.—The basis of an individual in any family development account of such individual shall be zero.

''(6) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which such person will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute a family development account described in this section. For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

''(7) REPORTS.—The trustee of a family development account shall make such reports regarding such account to the Secretary and to the individual for whom the account is maintained with respect to contributions (and the years to which they relate), distributions, and such other matters as the Secretary may require under regulations. The reports required by this paragraph—

''(A) shall be filed at such time and in such manner as the Secretary prescribes in such regulations, and

''(B) shall be furnished to individuals—

''(i) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

''(ii) in such manner as the Secretary prescribes in such regulations.

''(8) INVESTMENT IN COLLECTIBLES TREATED AS DISTRIBUTIONS.—Rules similar to the rules of section 408(m) shall apply for purposes of this section.

''(h) PENALTY FOR DISTRIBUTIONS NOT USED FOR QUALIFIED FAMILY DEVELOPMENT EXPENSES.—

''(1) IN GENERAL.—If any amount is distributed from a family development account and is not used exclusively to pay qualified family development expenses for the holder of the account or the spouse or dependent (as defined in section 152) of such holder, the tax imposed by this chapter for the taxable year of such distribution shall be increased by the sum of—

''(A) 100 percent of the portion of such amount which is includible in gross income and is attributable to amounts contributed under section 1400H (relating to demonstration program to provide matching amounts in renewal communities), and

''(B) 10 percent of the portion of such amount which is includible in gross income and is not described in paragraph (1).

For purposes of this subsection, the portion of a distributed amount which is attributable to amounts contributed under section 1400H is the amount which bears the same ratio to the distributed amount as the aggregate amount contributed under section 1400H to all family development accounts of the individual bears to the aggregate amount contributed to such accounts from all sources.

''(2) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—Paragraph (1) shall not apply to distributions which are—

''(A) made on or after the date on which the account holder attains age 59½,

''(B) made pursuant to subsection (e)(6),

''(C) made to a beneficiary (or the estate of the account holder) on or after the death of the account holder, or

''(D) attributable to the account holder's being disabled within the meaning of section 72(m)(7).

"SEC. 1400H. DEMONSTRATION PROGRAM TO PROVIDE MATCHING CONTRIBUTIONS TO FAMILY DEVELOPMENT ACCOUNTS IN CERTAIN RENEWAL COMMUNITIES.

''(a) DESIGNATION.—

''(1) DEFINITIONS.—For purposes of this section, the term 'FDA matching demonstration area' means any renewal community—

''(A) which is nominated under this section by each of the local governments and States which nominated such community for designation as a renewal community under section 1400D(a)(1)(A), and

''(B) which the Secretary of Housing and Urban Development, after consultation with—

''(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director

of the Office of Management and Budget, and the Administrator of the Small Business Administration, and

''(ii) in the case of a community on an Indian reservation, the Secretary of the Interior,

designates as an FDA matching demonstration area.

''(2) NUMBER OF DESIGNATIONS.—The Secretary of Housing and Urban Development may designate not more than 25 renewal communities as FDA matching demonstration areas.

''(3) LIMITATIONS ON DESIGNATIONS.—

''(A) PUBLICATION OF REGULATIONS.—The Secretary of Housing and Urban Development shall prescribe by regulation no later than 4 months after the date of the enactment of this section, after consultation with the officials described in paragraph (1)(B)—

''(i) the procedures for nominating a renewal community under paragraph (1)(A) (including procedures for coordinating such nomination with the nomination of an area for designation as a renewal community under section 1400D), and

''(ii) the manner in which nominated renewal communities will be evaluated for purposes of this section.

''(B) TIME LIMITATIONS.—The Secretary of Housing and Urban Development may designate renewal communities as FDA matching demonstration areas only during the 24-month period beginning on the first day of the first month following the month in which the regulations described in subparagraph (A) are prescribed.

''(4) DESIGNATION BASED ON DEGREE OF POVERTY, ETC.—The rules of section 1400D(a)(3) shall apply for purposes of designations of FDA matching demonstration areas under this section.

''(b) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—Any designation of a renewal community as an FDA matching demonstration area shall remain in effect during the period beginning on the date of such designation and ending on the date on which such area ceases to be a renewal community.

''(c) MATCHING CONTRIBUTIONS TO FAMILY DEVELOPMENT ACCOUNTS.—

''(1) IN GENERAL.—Not less than once each taxable year, the Secretary shall deposit (to the extent provided in appropriation Acts) into a family development account of each qualified individual (as defined in section 1400G(f)) who is a resident throughout the taxable year of an FDA matching demonstration area an amount equal to the sum of the amounts deposited into all of the family development accounts of such individual during such taxable year (determined without regard to any amount contributed under this section).

''(2) LIMITATIONS.—

''(A) ANNUAL LIMIT.—The Secretary shall not deposit more than $1000 under paragraph (1) with respect to any individual for any taxable year.

''(B) AGGREGATE LIMIT.—The Secretary shall not deposit more than $2000 under paragraph (1) with respect to any individual.

''(3) EXCLUSION FROM INCOME.—Except as provided in section 1400G, gross income shall not include any amount deposited into a family development account under paragraph (1).

''SEC. 1400I. DESIGNATION OF EARNED INCOME TAX CREDIT PAYMENTS FOR DEPOSIT TO FAMILY DEVELOPMENT ACCOUNT.

''(a) IN GENERAL.—With respect to the return of any qualified individual (as defined in section 1400G(f)) for the taxable year of the tax imposed by this chapter, such individual may designate that a specified portion (not less than $1) of any overpayment of tax for such taxable year which is attributable to the earned income tax credit shall be deposited by the Secretary into a family development account of such individual. The Secretary shall so deposit such portion designated under this subsection.

''(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year—

''(1) at the time of filing the return of the tax imposed by this chapter for such taxable year, or

''(2) at any other time (after the time of filing the return of the tax imposed by this chapter for such taxable year) specified in regulations prescribed by the Secretary.

Such designation shall be made in such manner as the Secretary prescribes by regulations.

''(c) PORTION ATTRIBUTABLE TO EARNED INCOME TAX CREDIT.—For purposes of subsection (a), an overpayment for any taxable year shall be treated as attributable to the earned income tax credit to the extent that such overpayment does not exceed the credit allowed to the taxpayer under section 32 for such taxable year.

''(d) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any portion of an overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by this chapter (determined without regard to extensions) or, if later, the date the return is filed.

''PART IV—ADDITIONAL INCENTIVES

''Sec. 1400J. Commercial revitalization credit.

''Sec. 1400K. Increase in expensing under section 179.

''SEC. 1400K. INCREASE IN EXPENSING UNDER SECTION 179.

''(a) GENERAL RULE.—In the case of a renewal community business (as defined in section 1400F), for purposes of section 179—

''(1) the limitation under section 179(b)(1) shall be increased by the lesser of—

''(A) $35,000, or

''(B) the cost of section 179 property which is qualified renewal property placed in service during the taxable year, and

''(2) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified renewal property shall be 50 percent of the cost thereof.

''(b) RECAPTURE.—Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified renewal property which ceases to be used in a renewal community by a renewal community business.

''(c) QUALIFIED RENEWAL PROPERTY.—

''(1) GENERAL RULE.—For purposes of this section—

''(A) IN GENERAL.—The term 'qualified renewal property' means any property to which section 168 applies (or would apply but for section 179) if—

''(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the renewal community took effect,

''(ii) the original use of which in a renewal community commences with the taxpayer, and

''(iii) substantially all of the use of which is in a renewal community and is in the active conduct of a qualified business (as defined in section 1400F(d)) by the taxpayer in such renewal community.

''(B) SPECIAL RULE FOR SUBSTANTIAL RENOVATIONS.—In the case of any property which is substantially renovated by the taxpayer, the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as satisfied. For purposes of the preceding sentence, property shall be treated as substantially renovated by the taxpayer only if, during any 24-month period beginning after the date on which the designation of the renewal community took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) $5,000.

''(2) SPECIAL RULES FOR SALE-LEASEBACKS.—For purposes of paragraph (1)(A)(ii), if property is sold and leased back by the taxpayer within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback.''

(b) DEDUCTION FOR CONTRIBUTIONS TO FAMILY DEVELOPMENT ACCOUNTS ALLOWABLE WHETHER OR NOT TAXPAYER ITEMIZES.—Subsection (a) of section 62 of the Internal Revenue Code of 1986 (relating to adjusted gross income defined) is amended by inserting after paragraph (17) the following new paragraph:

''(18) FAMILY DEVELOPMENT ACCOUNTS.—The deduction allowed by section 1400G(a)(1)(A).''

SEC. ___12. EXTENSION OF EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS FOR RENEWAL COMMUNITIES.

Section 198(c)(2)(A) of the Internal Revenue Code of 1986 (defining targeted area) is amended by striking ''and'' at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

''(iv) any renewal community designated under section 1400D, and''.

SEC. ___13. EXTENSION OF WORK OPPORTUNITY TAX CREDIT FOR RENEWAL COMMUNITIES

(a) EXTENSION.—Paragraph (4) of section 51(c) of the Internal Revenue Code of 1986 (relating to termination) is amended to read as follows:

''(4) TERMINATION.—

''(A) IN GENERAL.—The term 'wages' shall not include any amount paid or incurred to an individual who begins work for the employer—

''(i) after December 31, 1994, and before October 1, 1996, or

''(ii) after June 30, 1998.

''(B) SPECIAL RULE FOR RENEWAL COMMUNITIES.—If—

''(i) the employer is engaged in a trade or business in a renewal community throughout the 1-year period referred to in subsection (b)(2),

''(ii) the individual who begins work for the employer is a resident of such renewal community throughout such 1-year period, and

''(iii) substantially all of the services which such individual performs for the employer during such 1-year period are performed in such renewal community,

then subparagraph (A)(ii) shall be applied by substituting the last day for which the designation of such renewal community under section 1400D is in effect for 'June 30, 1998.'''

(b) CONGRUENT TREATMENT OF RENEWAL COMMUNITIES AND ENTERPRISE ZONES FOR PURPOSES OF YOUTH RESIDENCE REQUIREMENTS.—

(1) HIGH-RISK YOUTH.—Subparagraphs (A)(ii) and (B) of section 51(d)(5) of such Code are each amended by striking ''empowerment zone or enterprise community'' and inserting ''empowerment zone, enterprise community, or renewal community''.

(2) QUALIFIED SUMMER YOUTH EMPLOYEE.—Clause (iv) of section 51(d)(7)(A) of such Code is amended by striking ''empowerment zone or enterprise community'' and inserting ''empowerment zone, enterprise community, or renewal community''.

(3) HEADINGS.—Paragraphs (5)(B) and (7)(C) of section 51(d) of such Code are each amended by inserting ''OR COMMUNITY'' in the heading after ''ZONE''.

SEC. ___14. ALLOWANCE OF COMMERCIAL REVITALIZATION CREDIT.

Section 46 of the Internal Revenue Code of 1986 (relating to investment credit) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the commercial revitalization credit provided under section 1400J.''

SEC. ___15. CONFORMING AND CLERICAL AMENDMENTS.

(a) TAX ON EXCESS CONTRIBUTIONS.—

(1) TAX IMPOSED.—Subsection (a) of section 4973 of such Code is amended by striking ''or'' at the end of paragraph (2), adding ''or'' at the end of paragraph (3), and inserting after paragraph (3) the following new paragraph:

''(4) a family development account (within the meaning of section 1400G(e)),''

(2) EXCESS CONTRIBUTIONS.—Section 4973 of such Code is amended by adding at the end the following new subsection:

''(g) FAMILY DEVELOPMENT ACCOUNTS.—For purposes of this section, in the case of a family development account, the term 'excess contributions' means the sum of—

''(1) the excess (if any) of—

''(A) the amount contributed for the taxable year to the account (other than a qualified rollover, as defined in section 1400G(c)(7), or a contribution under section 1400H), over

''(B) the amount allowable as a deduction under section 1400G for such contributions, and

''(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

''(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 1400G(b)(1),

''(B) the distributions out of the account for the taxable year to which rules similar to the rules of section 408(d)(5) apply by reason of section 1400G(b)(3), and

''(C) the excess (if any) of the maximum amount allowable as a deduction under section 1400G for the taxable year over the amount contributed to the account for the taxable year (other than a contribution under section 1400H).

For purposes of this subsection, any contribution which is distributed from the family development account in a distribution to which rules similar to the rules of section 408(d)(4) apply by reason of section 1400G(b)(3) shall be treated as an amount not contributed.''

(3) HEADING.—The heading of section 4973 of such Code is amended by inserting ''**FAMILY DEVELOPMENT ACCOUNTS,**'' after ''**CONTRACTS,**''.

(b) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 of such Code is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

''(6) SPECIAL RULE FOR FAMILY DEVELOPMENT ACCOUNTS.—An individual for whose benefit a family development account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a family development account by reason of the application of section 1400G(d)(2) to such account.'', and

(2) in subsection (e)(1), by striking ''or'' at the end of subparagraph (E), by redesignating subparagraph (F) as subparagraph (G), and by inserting after subparagraph (E) the following new subparagraph:

''(F) a family development account described in section 1400G(e), or''.

(c) INFORMATION RELATING TO CERTAIN TRUSTS AND ANNUITY PLANS.—Subsection (c) of section 6047 of such Code is amended—

(1) by inserting ''or section 1400G'' after ''section 219'', and

(2) by inserting '', of any family development account described in section 1400G(e),'', after ''section 408(a)''.

(d) INSPECTION OF APPLICATIONS FOR TAX EXEMPTION.—Clause (i) of section 6104(a)(1)(B) of such Code is amended by inserting ''a family development account described in section 1400G(e),'' after ''section 408(a),''.

(e) FAILURE TO PROVIDE REPORTS ON FAMILY DEVELOPMENT ACCOUNTS.—Section 6693 of such Code is amended—

(1) by inserting ''**OR ON FAMILY DEVELOPMENT ACCOUNTS**'' after ''**ANNUITIES**'' in the heading of such section, and

(2) in subsection (a)(2), by striking ''and'' at the end of subparagraph (C), by striking the period and inserting '', and'' in subparagraph (D), and by adding at the end the following new subparagraph:

''(E) section 1400G(g)(7) (relating to family development accounts).''

(f) CONFORMING AMENDMENTS REGARDING COMMERCIAL REVITALIZATION CREDIT.—

(1) Section 39(d) of such Code is amended by adding at the end the following new paragraph:

''(9) NO CARRYBACK OF SECTION 1400J CREDIT BEFORE DATE OF ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to any commercial revitalization credit determined under section 1400J may be carried back to a taxable year ending before the date of the enactment of section 1400J.''

(2) Subparagraph (B) of section 48(a)(2) of such Code is amended by inserting ''or commercial revitalization'' after ''rehabilitation'' each place it appears in the text and heading.

(3) Subparagraph (C) of section 49(a)(1) of such Code 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) the portion of the basis of any qualified revitalization building attributable to qualified revitalization expenditures.''

(4) Paragraph (2) of section 50(a) of such Code is amended by inserting ''or 1400J(d)(2)'' after ''section 47(d)'' each place it appears.

(5) Subparagraph (A) of section 50(a)(2) of such Code is amended by inserting ''or qualified revitalization building (respectively)'' after ''qualified rehabilitated building''.

(6) Subparagraph (B) of section 50(a)(2) of such Code is amended by adding at the end the following new sentence: ''A similar rule shall apply for purposes of section 1400J.''

(7) Paragraph (2) of section 50(b) of such Code is amended by striking ''and'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ''; and'', and by adding at the end the following new subparagraph:

''(E) a qualified revitalization building (as defined in section 1400J) to the extent of the portion of the basis which is attributable to qualified revitalization expenditures (as defined in section 1400J).''

(8) Subparagraph (C) of section 50(b)(4) of such Code is amended—

(A) by inserting ''or commercial revitalization'' after ''rehabilitated'' in the text and heading, and

(B) by inserting ''or commercial revitalization'' after ''rehabilitation''.

(9) Subparagraph (C) of section 469(i)(3) is amended—

(A) by inserting ''or section 1400J'' after ''section 42''; and

(B) by striking ''CREDIT'' in the heading and inserting ''AND COMMERCIAL REVITALIZATION CREDITS''.

(g) CLERICAL AMENDMENTS.—

(1) The table of subchapters for chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Subchapter X. Renewal Communities.''

(2) The table of parts for subchapter X of chapter 1 of such Code (as added by subtitle A) is amended by adding at the end the following new items:

''Part II. Renewal community capital gain and stock.

''Part III. Family development accounts.

''Part IV. Additional Incentives.''

(3) The table of sections for chapter 43 of such Code is amended by striking the item relating to section 4973 and inserting the following new item:

''Sec. 4973. Tax on excess contributions to individual retirement accounts, medical savings accounts, certain section 403(b) contracts, family development accounts, and certain individual retirement annuities.''

(4) The table of sections for part I of subchapter B of chapter 68 of such Code is amended by striking the item relating to section 6693 and inserting the following new item:

''Sec. 6693. Failure to provide reports on individual retirement accounts or annuities or on family development accounts; penalties relating to designated nondeductible contributions.''

Subtitle C—Additional Provisions

SEC. ___21. TRANSFER OF UNOCCUPIED AND SUBSTANDARD HUD-HELD HOUSING IN RENEWAL COMMUNITIES TO LOCAL GOVERNMENTS.

(a) TRANSFER REQUIREMENT.—Pursuant to the authority under section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, the Secretary shall transfer ownership of any qualified HUD property to the unit of general local government having jurisdiction for the area in which the property is located in accordance with this section, but only if the unit of general local government enters into an agreement with the Secretary meeting the requirements of subsection (d).

(b) QUALIFIED HUD PROPERTIES.—For purposes of this section, the term ''qualified HUD property'' means any unoccupied multifamily housing, project, substandard multifamily housing project, or unoccupied single family property, that is—

(1) owned by the Secretary; and

(2) located within a renewal community.

(c) TIMING OF TRANSFER.—Any transfer of ownership required under subsection (a) shall be completed—

(1) with respect to any multifamily housing project or single family property that is acquired by the Secretary before the date on which the area in which property is located is designated as a renewal community and that is substandard or unoccupied (as applicable) upon such date, not later than 1 year after such date; and

(2) with respect to any multifamily housing project or single family property that is acquired by the Secretary on or after the date on which the area in which the property is located is designated as a renewal community, not later than 1 year after—

(A) the date on which the project is determined to be substandard or unoccupied (as applicable), in the case of a property that is not unoccupied or substandard upon acquisition by the Secretary; or

(B) the date on which the project is acquired by the Secretary, in the case of a property that is substandard or unoccupied (as applicable) upon such acquisition.

(d) AGREEMENTS TO SELL PROPERTY TO COMMUNITY DEVELOPMENT CORPORATIONS.—An agreement described in this subsection is an agreement that requires a unit of general local government to dispose of the qualified HUD property acquired by the unit of general local government in accordance with the following requirements:

(1) NOTIFICATION TO COMMUNITY DEVELOPMENT CORPORATIONS.—Not later than 30 days after the date on which the unit of general local government acquires title to the property under subsection (a), the unit of general local government shall notify each community development corporation located in the State in which the property is located—

(A) of such acquisition of title; and

(B) that, during the 6-month period beginning on the date on which such notification is made, such community development corporations shall have the exclusive right under this subsection to make bona fide offers to purchase the property on a cost recovery basis.

(2) RIGHT OF FIRST REFUSAL.—During the 6-month period described in paragraph (1)(B)—

(A) the unit of general local government may not sell or offer to sell the qualified HUD property other than to a party notified under paragraph (1), unless each community development corporation required to be so notified has notified the unit of general local government that the corporation will not make an offer to purchase the property; and

(B) the unit of general local government shall accept a bona fide offer to purchase the property made during such period if the offer is acceptable to the unit of general local government, except that a unit of general local government may not sell a property to a community development corporation during that 6-month period other than on a cost recovery basis.

(3) OTHER DISPOSITION.—During the 6-month period beginning on the expiration of the 6-month period described in paragraph (1)(B), the unit of general local government shall dispose of the property on a negotiated, competitive bid, or other basis, on such terms as the unit of general local government deems appropriate.

(e) SATISFACTION OF INDEBTEDNESS.—Before transferring ownership of any qualified HUD property pursuant to subsection (a), the Secretary shall satisfy any indebtedness incurred in connection with the property to be transferred, by—

(1) canceling the indebtedness; or

(2) reimbursing the unit of general local government to which the property is transferred for the amount of the indebtedness.

(f) DETERMINATION OF STATUS OF PROPERTIES.—To ensure compliance with the requirements of subsection (c), the Secretary shall take the following actions:

(1) UPON DESIGNATION OF RENEWAL COMMUNITIES.—Upon the designation of any renewal community, the Secretary shall promptly assess each residential property owned by the Secretary that is located within such renewal community to determine whether such property is a qualified HUD property.

(2) UPON ACQUISITION.—Upon acquiring any residential property that is located with a renewal community, the Secretary shall promptly determine whether the property is a qualified HUD property.

(3) UPDATES.—The Secretary shall periodically reassess the residential properties owned by the Secretary to determine whether any such properties have become qualified HUD properties.

(g) TENANT LEASES.—This section shall not affect the terms or the enforceability of any contract or lease entered into with respect to any residential property before the date that such property becomes a qualified HUD property.

(h) PROCEDURES.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary shall establish, by rule, regulation, or order, such procedures as may be necessary to carry out this section.

(i) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) COMMUNITY DEVELOPMENT CORPORATION.—The term ''community development corporation'' means a nonprofit organization whose primary purpose is to promote community development by providing housing opportunities for low-income families.

(2) COST RECOVERY BASIS.—The term ''cost recovery basis'' means, with respect to any sale of a residential property by a unit of general local government to a community development corporation under subsection (d)(2), that the purchase price paid by the community development corporation is less than or equal to the costs incurred by the unit of general local government in connection with such property during the period beginning on the date on which the unit of general local government acquires title to the property under subsection (a) and ending on the date on which the sale is consummated.

(3) LOW-INCOME FAMILIES.—The term ''low-income families'' has the meaning given the term in section 3(b) of the United States Housing Act of 1937.

(4) MULTIFAMILY HOUSING PROJECT.—The term ''multifamily housing project'' has the meaning given the term in section 203 of the Housing and Community Development Amendments of 1978.

(5) RENEWAL COMMUNITY.—The term ''renewal community'' means an area designated (under subchapter X of chapter 1 of the Internal Revenue Code of 1986) as a renewal community.

(6) RESIDENTIAL PROPERTY.—The term ''residential property'' means a property that is a multifamily housing project or a single family property.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

(8) SEVERE PHYSICAL PROBLEMS.—The term ''severe physical problems'' means, with respect to a dwelling unit, that the unit—

(A) lacks hot or cold piped water, a flush toilet, or both a bathtub and a shower in the unit, for the exclusive use of that unit;

(B) on not less than 3 separate occasions during the preceding winter months, was uncomfortably cold for a period of more than 6 consecutive hours due to a malfunction of the heating system for the unit;

(C) has no functioning electrical service, exposed wiring, any room in which there is not a functioning electrical outlet, or has experienced 3 or more blown fuses or tripped circuit breakers during the preceding 90-day period;

(D) is accessible through a public hallway in which there are no working light fixtures, loose or missing steps or railings, and no elevator; or

(E) has severe maintenance problems, including water leaks involving the roof, windows, doors, basement, or pipes or plumbing fixtures, holes or open cracks in walls or ceilings, severe paint peeling or broken plaster, and signs of rodent infestation.

(9) SINGLE FAMILY PROPERTY.—The term ''single family property'' means a 1- to 4-family residence.

(10) SUBSTANDARD.—The term ''substandard'' means, with respect to a multifamily housing project, that 25 percent or more of the dwelling units in the project have severe physical problems.

(11) UNIT OF GENERAL LOCAL GOVERNMENT.—The term ''unit of general local government'' has the meaning given the term in section 102(a) of the Housing and Community Development Act of 1974.

(12) UNOCCUPIED.—The term ''unoccupied'' means, with respect to a residential property, that the unit of general local government having jurisdiction over the area in which the project is located has certified in writing that the property is not inhabited.

SEC. ___22. CRA CREDIT FOR INVESTMENTS IN COMMUNITY DEVELOPMENT ORGANIZATIONS LOCATED IN RENEWAL COMMUNITIES.

Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by adding at the end the following new subsection:

''(c) INVESTMENTS IN CERTAIN COMMUNITY DEVELOPMENT ORGANIZATIONS.—In assessing and taking into account, under subsection (a), the record of a regulated financial institution, the appropriate Federal financial supervisory agency may consider, as a factor, investments of the institution in, and capital investment, loan participation, and other ventures undertaken by the institution in cooperation with, any community development organization (as defined in section 234 of the Bank Enterprise Act of 1991) which is located in a renewal community (as designated under section 1400D of the Internal Revenue Code of 1986).''.

SEC. 23. CLARIFICATION OF DEDUCTION FOR DEFERRED COMPENSATION.

(a) IN GENERAL.—Section 404(a) (relating to deduction for contributions of an employer to an employee's trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end the following new paragraph:

''(11) DETERMINATIONS RELATING TO DEFERRED COMPENSATION.—

''(A) IN GENERAL.—For purposes of determining under this section—

''(i) whether compensation of an employee is deferred compensation, and

''(ii) when deferred compensation is paid, no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to severance pay.''

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by subsection (a) to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account in such first taxable year.

SEC. 24. MODIFICATION TO FOREIGN TAX CREDIT CARRYBACK AND CARRYOVER PERIODS.

(a) IN GENERAL.—Section 904(c) (relating to limitation on credit) is amended—

(1) by striking ''in the second preceding taxable year,'', and

(2) striking ''or fifth'' and inserting ''fifth, sixth, or seventh''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to credits arising in taxable years beginning after December 31, 1999.

BENNETT (AND HATCH) AMENDMENTS NOS. 1713–1714

(Order to lie on the table.)

Mr. BENNETT (for himself and Mr. HATCH) submitted two amendments intended to be proposed by them to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

AMENDMENT NO. 1713

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

SEC. 11___. TRANSPORTATION ASSISTANCE FOR OLYMPIC CITIES.

(a) PURPOSE.—The purpose of this section is to authorize the provision of assistance for, and support of, State and local efforts concerning surface transportation issues necessary to obtain the national recognition and economic benefits of participation in the International Olympic movement and the International Paralympic movement by hosting international quadrennial Olympic and Paralympic events in the United States.

(b) PRIORITY FOR TRANSPORTATION PROJECTS RELATING TO OLYMPIC AND PARALYMPIC EVENTS.—Notwithstanding any other provision of law, from funds available to carry out section 104(k) of title 23, United States Code, the Secretary may give priority to funding for a transportation project relating to an international quadrennial Olympic or Paralympic event if—

(1) the project meets the extraordinary needs associated with an international quadrennial Olympic or Paralympic event; and

(2) the project is otherwise eligible for assistance under section 104(k) of that title.

(c) TRANSPORTATION PLANNING ACTIVITIES.—The Secretary may participate in—

(1) planning activities of States and metropolitan planning organizations and transportation projects relating to an international quadrennial Olympic or Paralympic event under sections 134 and 135 of title 23, United States Code; and

(2) developing intermodal transportation plans necessary for the projects in coordination with State and local transportation agencies.

(d) FUNDING.—Notwithstanding section 541(a) of title 23, United States Code, from funds made available under that section, the Secretary may provide assistance for the development of an Olympic and a Paralympic transportation management plan in cooperation with an Olympic Organizing Committee responsible for hosting, and State and local communities affected by, an international quadrennial Olympic or Paralympic event.

(e) TRANSPORTATION PROJECTS RELATING TO OLYMPIC AND PARALYMPIC EVENTS.—

(1) IN GENERAL.—The Secretary may provide assistance, including planning, capital, and operating assistance, to States and local governments in carrying out transportation projects relating to an international quadrennial Olympic or Paralympic event.

(2) FEDERAL SHARE.—The Federal share of the cost of a project assisted under this subsection shall not exceed 80 percent.

(f) ELIGIBLE GOVERNMENTS.—A State or local government shall be eligible to receive assistance under this section only if the government is hosting a venue that is part of an international quadrennial Olympics that is officially selected by the International Olympic Committee.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section such sums as are necessary for each of fiscal years 1998 through 2003.

AMENDMENT NO. 1714

At the appropriate place, insert the following:

SEC. ___. TRANSPORTATION ASSISTANCE FOR OLYMPIC CITIES.

(a) PURPOSE; DEFINITIONS.—

(1) PURPOSE.—The purpose of this section is to provide assistance and support to State and local efforts on surface and aviation-related transportation issues necessary to obtain the national recognition and economic benefits of participation in the International Olympic movement and the International Paralympic movement by hosting international quadrennial Olympic and Paralympic events in the United States.

(2) DEFINITION.—In this section, the term ''Secretary'' means the Secretary of Transportation.

(b) PRIORITY FOR TRANSPORTATION PROJECTS RELATED TO OLYMPIC AND PARALYMPIC EVENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may give priority to funding for a mass transportation project related to an international quadrennial Olympic or Paralympic event to carry out 1 or more of sections 5303, 5307, and 5309 of title 49, United States Code, if the project—

(A) in the determination of the Secretary, will meet extraordinary transportation needs associated with an international quadrennial Olympic or Paralympic event; and

(B) is otherwise eligible for assistance under the section at issue.

(2) CONTRACTUAL OBLIGATION.—A grant or a contract for a project described in paragraph (1), approved by the Secretary and funded with amounts made available under this subsection, is a contractual obligation to pay the Government's share of the cost of the project.

(3) NON-FEDERAL SHARE.—For purposes of determining the non-Federal share of a project funded under this subsection, highway and transit projects shall be considered to be a program of projects.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Mass Transit Account of the Highway Trust Fund such sums as may be necessary to carry out this subsection.

(c) TRANSPORTATION PLANNING ACTIVITIES.—Notwithstanding any other provision of law, the Secretary may participate in—

(1) planning activities of State and metropolitan planning organizations, and project sponsors, for a transportation project related to an international quadrennial Olympic or Paralympic event under sections 5303 and 5305a of title 49, United States Code; and

(2) developing intermodal transportation plans necessary for transportation projects described in paragraph (1), in coordination with State and local transportation agencies.

(d) TRANSPORTATION PROJECTS RELATED TO OLYMPIC AND PARALYMPIC EVENTS.—

(1) GENERAL AUTHORITY.—The Secretary may provide assistance to State and local governments, and an Olympic Organizing Committee responsible for hosting an international quadrennial Olympic or Paralympic event, in carrying out transportation projects related to an international quadrennial Olympic or Paralympic event. Such assistance may include planning, capital, and operating assistance.

(2) NON-FEDERAL SHARE.—The Federal share of the costs of any transportation project assisted under this subsection shall not exceed 80 percent. For purposes of determining the non-Federal share of a project assisted under this subsection, highway and transit projects shall be considered to be a program of projects.

(e) ELIGIBLE GOVERNMENTS.—A State or local government is eligible to receive assistance under this section only if it is hosting a venue that is part of an international quadrennial Olympics that is officially selected by the International Olympic Committee.

(f) AIRPORT DEVELOPMENT PROJECTS.—

(1) AIRPORT DEVELOPMENT DEFINED.—Section 47102(3) of title 49, United States Code, is amended by adding at the end the following:

''(H) Developing, in coordination with State and local transportation agencies, intermodal transportation plans necessary for Olympic-related projects at an airport.''.

(2) DISCRETIONARY GRANTS.—Section 47115(d) of title 49, United States Code, is amended—

(A) by striking ''and'' at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the need for the project in order to meet the unique demands of hosting international quadrennial Olympic or Paralympic events.''.

(g) GRANT OR CONTRACT TERMS AND CONDITIONS.—Notwithstanding any other provision of law, a grant or contract funded under this section shall be subject to such terms and conditions as the Secretary may determine, including the waiver of planning and procurement requirements.

(h) USE OF FUNDS BEFORE APPORTIONMENTS AND ALLOCATIONS.—Notwithstanding any other provision of law, funds made available under section 5307 of title 49, United States Code, may be used by the Secretary for projects funded under this section before apportioning or allocating funds to States, metropolitan planning organizations, or transit agencies.

(i) USE OF APPROPRIATIONS.—From amounts made available to carry out sections 5303, 5307, and 5309 of title 49, United States Code, in each of fiscal years 1998 through 2003, the Secretary may use such amounts as may be necessary to carry out this section.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Thursday, March 5, 1998, at 9 a.m. in SR–328A. The purpose of this meeting will be to hold a hearing examining the Kyoto treaty on climate change and its effect on the agricultural economy.

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

COMMITTEE ON ARMED SERVICES

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, March 5, 1998, at 10 a.m. in open session, to receive testimony on the role of the Department of Defense in countering the transnational threats of the 21st century.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, March 5, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this oversight hearing is to consider the President's proposed budget for FY1999 for the Department of the Interior.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. CHAFEE. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, March 5, 1998, at 4 p.m. for a business meeting. The agenda will be the approval of the Committee Report on the Special Investigation of Illegal and Improper Activities in Connection with 1996 Federal Election Campaigns.

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

COMMITTEE ON THE JUDICIARY

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on the Judiciary, be authorized to hold an executive business meeting during the session of the Senate on Thursday, March 5, 1998, at 10 a.m., in room 226 of the Senate Dirksen Office Building.

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

SUBCOMMITTEE ON CHILDREN AND FAMILIES

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources, Subcommittee on Children and Families, be authorized to meet for a hearing on after school child care during the session of the Senate on Thursday, March 5, 10 a.m.

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

SUBCOMMITTEE ON IMMIGRATION

Mr. CHAFEE. Mr. President, I ask unanimous consent that the subcommittee on Immigration, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Thursday, March 5, 1998, at 2 p.m. to hold a hearing in room 226, Senate Dirksen Building, on: ''Immigration and Naturalization Service Oversight: Reforming the Naturalization Process.''

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology and Space of the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, March 5, 1998, at 2 p.m. on commercialization of space.

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

ADDITIONAL STATEMENTS

RECOGNITION OF LT. COL. EILEEN COLLINS, THE FIRST WOMAN SELECTED TO COMMAND A MISSION OF THE SPACE SHUTTLE

● Mr. MOYNIHAM. Mr. President, I rise to recognize the accomplishments of Lt. Col. Eileen Collins, a New York native who earlier this morning was named the first female space shuttle commander by first lady Hillary Rodham Clinton.

Ms. Collins was born in Elmira, New York and graduated from the Elmira Free Academy in 1974. She received her associate's degree in mathematics and science form Corning Community College in 1976, and a Bachelor of Arts degree in mathematics from Syracuse University in 1978. Ms. Collins later received graduate degrees in operations research and space systems management at Stanford University and Webster University.

Ms. Collins has logged over 4,700 hours in thirty different types of aircraft. She was an assistant professor of mathematics at the Air Force Academy in Colorado from 1986 to 1989 and also served as an instructor pilot during her time there. Her many awards include the Department of Defense Superior Service Medal, the Armed Forces Expeditionary Medal for service in Grenada, and the NASA Space Flight Medal.

Lt. Col. Collins has soared to great heights, both literally and figuratively. She is, in several senses, a modern day pioneer. Her career has already been distinguished by efforts to push forward the frontiers of knowledge, through her work as a scientist and as a professor. She has contributed to efforts to bridge gaps between Russia and the Untied States, though her service as the first woman to pilot the space shuttle during the first flight of the new joint Russian-American Space Program—a program which embodies our vision of a new era of international scientific collaboration. Moreover, she is a member of an elite cadre of women who have served in our astronaut program. Ms. Collins is one of only 27 women who have flown in the history of the U.S. space shuttle program, out of a total of 229 people. Today, she steps up to her place in history as the first woman to be assigned command of a space shuttle mission, and in so doing expands our national vision of the opportunities and possibilities open to all American women.

I am proud to claim Lt. Col. Collins as a native of New York State, and as a product of New York educational institutions through her undergraduate years. Good luck, congratulations, and Godspeed, Lt. Col. Collins.●

NEW HAMPSHIRE'S 1998 OLYMPIC GOLD MEDALISTS

● Mr. SMITH of New Hampshire. Mr. President, I rise today to congratulate Sarah Tueting, Gretchen Ulion, Katie King, Tarah Mounsey, Tricia Dunn, Sue Merz, Colleen Coyne and Karyn Bye, all distinguished athletes, for bringing home an Olympic gold medal in women's hockey. This gold medal symbolizes their dedication to excellence, relentless drive for greatness and unfailing crusade to become the best of the best.

It is a special honor to have these Granite Staters represent our country and the State of New Hampshire while competing in Nagano, Japan. Concord's Tara Mounsey and Salem's Katie King both went to Brown University in Rhode Island. Tricia Dunn, a resident of Derry graduated from the University of New Hampshire.

I also feel New Hampshire has a special claim to the Olympiads that attended Granite State Universities. Sarah Tueting and Gretchen Ulion both went to Dartmouth College. Sarah is from Winnetka, Illinois, and Gretchen is from Marlborough, Connecticut. Also, Colleen Coyne, Sue Merz, and Karyn Bye all went to the University of New Hampshire. Colleen is from East Falmouth, Massachusetts, Sue is from Greenwich, Connecticut, and Karyn is from River Falls, Wisconsin.

The team was a strong medal contender coming into the Games, however, the Canadian team had a stronger pre-Olympic record. Nonetheless, they beat the odds and prevailed. Team USA went undefeated, winning the final gold medal game against Team Canada, 3 to 1.

Their triumph created an immediate boom to women's hockey. Like pioneers, they have forged ahead in a sport historically not common for women and have proven to the world that it is no longer a sport just for men. As a result, they have become a catalyst for significant change in the interest of women's hockey. Already, local skating rinks across the country are reporting huge increases in lesson sign-ups.

These young Americans have reached the pinnacle of success, achieved what most only dream about, and have proven once again that Americans continue to achieve great feats. They are very much like diplomats, proudly representing America and delivering a superb performance in the world arena of Olympiads.

This Olympic team best exemplifies the qualities of a winning team. Four words come to mind that best represent the tools they used to bring home the gold: teamwork, dedication, hard work, and perseverance. Their attributes are an example for all that inspire others to succeed and reach that dream of dreams.

As a participant in the Olympics, they have joined an elite group of athletes who have continued a tradition rooted since the days of the ancient Greeks. The Olympics are a time when countries come together and put aside their differences to celebrate not only competition but humanity. It is a gathering of diverse cultures, beliefs and

traditions which are brought together for a common cause. This event, for which these women have worked so hard is one of the few times the world can concur this way. To not only attend the Olympics but to win a gold medal is an honor of which they should all be proud.

Mr. President, I want to congratulate Sarah Tueting, Tarah Mounsey, Tricia Dunn, Sue Merz, Colleen Coyne and Karyn Bye for their outstanding accomplishments and I am proud to represent them in the U.S. Senate.●

INTERNATIONAL WOMEN'S DAY

● Mr. FEINGOLD. Mr. President, this weekend, on Sunday, March 8, 1998, the world community will celebrate International Women's Day. This day is a time to mark the achievements and progress of women around the world, but also to consider the long road we still have to travel to reach equality and respect for the basic human rights for all women.

Many women and men will mark this day by reflecting on how far women have come in many societies and by continuing to work toward true equality for women all across the globe. The United States has a lot to be proud of in this regard. Women make significant contributions at every level of our society, including in this distinguished body.

Unfortunately, a large number of women will not even know of this day, which is meant to be a celebration of their achievements and accomplishments. On International Women's Day, many women will continue to be subjugated by their husbands or their governments, and many will be unaware of the basic human rights to which they are entitled as members of the world community. In cities and towns all over the world—including in the United States—International Women's Day will be just another day in the long struggle for women to achieve equal pay for equal work, full political and religious rights, access to adequate health care and child care, and the right to control their own destinies. It is troubling that, while women make up approximately 51 percent of the world's population, many of them have little or no civil or political rights.

As Ranking Member on the Subcommittee on African Affairs of the Senate Committee on Foreign Relations, I have had no opportunity to learn much about the status of women on that continent. The conditions into which women are born in Africa vary from country to country and impact greatly on their chances for a successful, happy life. According to the United Nations, baby girls born between 1995 and 2000 in the West African country of Sierra Leone can expect to live approximately 39 years, the lowest for women born on that continent. In this small, war-torn nation, the infant mortality rate is 169 per 1,000 live births, the highest in Africa.

By contrast, the United Nations says, baby girls born in the United States during the same period, 1995–2000, can expect to live 80 years, more than twice as long as baby girls born in Sierra Leone. The infant mortality rate in this country is seven per 1,000 live births—162 less than that of Sierra Leone. The vast majority of baby girls born in the United States have a bright future ahead of them; their counterparts in Sierra Leone face instability and the constant threat of war. A baby girl born today in Wisconsin will share approximately 39 of her birthdays with a baby girl born today in Sierra Leone—sadly, it is unlikely that the baby girl in Sierra Leone will reach her 40th birthday.

In another war-torn African nation, Angola, the conditions are not much better. The thousands of unmarked landmines that riddle that country have contributed to the low 48-year life expectancy of Angolan women. According to the United Nations, women make up 46 percent of the nation's workforce, and 73 percent of women 15 and over contribute to the nation's economy. These women are indicative of those all over the African continent—and indeed all over the world. They literally carry the economy on their backs by producing handmade products and carrying them to markets, or single-handedly transporting bundles of wood or vessels of water for their families.

But, fortunately, not all of the women in Africa or the rest of the world experience such bleak circumstances. For example, women around the world have made great strides in business with the help of microcredit programs. These programs extend loans, often less than $100, to women who need assistance starting or expanding a small business. The benefits of these loans, which are almost always repaid, far exceed their monetary worth. Domestic and international microcredit programs have enabled thousands of women to find the confidence necessary to become self-sufficient and to support their families without government assistance—often for the first time.

In a 1997 speech commemorating International Women's Day, Secretary of State Madeleine K. Albright said, ''Advancing the status of women is not only a moral imperative; it is being actively integrated into the foreign policy of the United States. It is our mission. It is the right thing to do, and, frankly, it is the smart thing to do.'' I wholeheartedly agree with this statement. I am pleased that the United States is taking an active role in the worldwide promotion of the rights of women. These efforts include working with the United Nations High Commissioner for Refugees to establish guidelines to protect female refugees from sexual and physical assault and exploitation. The United States is also working to ensure that the War Crimes Tribunals for Rwanda and the Former Yugoslavia will vigorously prosecute rape as a war crime. Too often, women have been the forgotten casualties of war. I am pleased that the United States government is working to ensure that female refugees are protected and that those who would use rape as a tactic of war are punished.

So, Mr. President, as the world prepares to celebrate International Women's Day, we should honor the achievements of women around the world, but we should not forget those who have little to celebrate.●

RECOGNITION OF ROSELLA SCHNAKENBERG

● Mr. BOND. Mr. President, I rise today to recognize Rosella Schnakenberg for her fifty years of service to First Community Bank in Ionia. On March 18, 1947, Rosella began working as a teller for the First Community Bank, then the Bank of Ionia. At the time she received a salary of $75 a month. Today she is Vice President and Facility Manager of the Bank and oversees the day-to-day operations.

Through the years Rosella has watched the economic ups and downs of the bank and through it all has made sure that people have received quality service and the assistance they need. Watching people start businesses, purchase homes and pay for their children's college education has allowed her to see first hand the help she has given to others.

In addition to Rosella's faithful service to her work, she is a community leader in Cole Camp, Missouri. She has been playing the organ at St. John's Lutheran Church in Cole Camp for more than fifty years and volunteers much of her free time to visiting nursing homes so that residents have company. I wish her continued success and congratulate her for fifty years of loyal service.●

RED CROSS MONTH

● Mr. SARBANES. Mr. President, I rise today to pay tribute to the achievement and service of the American Red Cross. March has been declared ''Red Cross Month'' by Presidential Proclamation, and I can think of no more appropriate a season to recognize an organization whose mission centers on renewing hope for the citizens of our Nation.

Founded in May, 1881 by Clara Barton, the American Red Cross was charged with providing emergency relief in times of war and natural disaster. Today, the American Red Cross is the largest grass-roots volunteer organization in the United States with 2658 chapters and over a million volunteers. I am pleased that the United States Congress had the foresight in 1905 to designate the American Red Cross as the lead voluntary agency responsible for national and international relief in times of peace. In over a century of service, this organization has grown

from an idea borne from war to a national network on which people depend in times of crisis and calm alike.

My own State of Maryland recently suffered severe damage from two consecutive Nor'Easters which battered the coastline. Ocean City, a center of Maryland's summer tourism, and Assateague Island, one of the State's most critical natural resources, sustained high winds, wave action and tidal surges which leveled protective dunes, destroyed recreational beaches and caused severe damage to roads, parking lots, and bike trails. American Red Cross volunteers responded quickly to the needs of these communities by preparing shelters for evacuees, providing replacement food, clothing and basic furnishing to those in need, and helped to evaluate damage to homes of year round residents. I am personally very grateful for all that was done for these people in a time of unexpected loss and would like to thank the many volunteers who pitch in when ''Help Can't Wait.''

Although disaster relief is one of the most important and renowned roles of the American Red Cross, the local chapters offer many other critical services that serve to prevent emergencies and provide training. The Red Cross is perhaps best known for its work to ensure a safe blood supply and blood products for cancer patients, accident victims and others in need. Other important services include courses in CPR, First Aid, HIV/AIDS education, swimming lessons, life guarding, and disaster relief and preparedness training.

The American Red Cross also works closely with civic and educational entities to further their message and facilitate training. In Maryland, a newly formulated ''Safe Families—Safe Kids'' Campaign will be presented to schoolchildren from kindergarten to third grade in Baltimore City and counties throughout the State. This program will address safety concerns for children and families, including fire and injury prevention and interaction with strangers.

The activities of the American Red Cross are innumerable and their contributions to the health and wellbeing of our society are invaluable. What is clear, this month and throughout the entire year, is that the tradition of service and the value of community responsibility thrives in the actions of this historic organization. I urge my colleagues to join me in applauding those who are taking part in the oldest and best of America's traditions—the spirit of service.●

HEALTHY KIDS ACT

● Mr. DORGAN. Mr. President, recently I cosponsored legislation authored by my colleague from North Dakota, Senator CONRAD, which addresses a serious threat to public health: youth smoking. Every day 3,000 kids take up smoking, and tragically, 1,000 of them will eventually die of tobacco-related illnesses. Since research has shown that 90 percent of all smokers begin smoking in their teens or younger, we must do more to prevent our children from becoming hooked on tobacco.

The Healthy Kids Act, S. 1638, takes the tobacco settlement negotiated by several states' attorneys general last summer and strengthens it. The bill provides the Food and Drug Administration with full authority to regulate tobacco. This would protect FDA's ability to, among other things, require health warnings on tobacco products, prohibit advertising aimed at children and insure the safety of tobacco ingredients. The bill imposes penalties on tobacco companies if they fail to reduce youth smoking rates by 67 percent over the next 10 years and funds research, prevention and smoking cessation programs. The bill also requires tobacco companies to make public their documents related to the health effects of smoking, manipulation of nicotine levels in tobacco and their efforts to market tobacco products to minors.

Finally, the legislation would impose a health fee on tobacco products of 50 cents per pack in 1999, increasing to $1.50 per pack in 2001. While I have some concern about the level of this new fee, it has two important goals. The first, and most important, is to discourage children from taking up smoking. Most experts agree that a substantial increase in the price of cigarettes is the most effective way to reduce teen smoking. Secondly, this new fee rightly asks smokers to pay for some of the costs to states and the federal government of treating smoking-related health problems.

I don't agree with every provision in S. 1638, but I cosponsored it because I believe it is important that Congress pass comprehensive legislation to combat youth smoking this year. Tobacco should continue to be a legal product for adults, but we need to do more to keep it out of the hands of children and we must hold the tobacco industry accountable for their efforts to hook our kids.●

TRIBUTE TO DR. WENDELL C. SOMERVILLE

● Mr. ROBB. Mr. President, I rise today to note the death of Dr. Wendell C. Somerville, who passed away on Sunday, December 28, 1997.

Dr. Somerville served his nation in the United States Navy and, at the age of 27, received his call to preach. In 1927, he was ordained in the Mill Neck Baptist Church of Como, North Carolina, by a council consisting of representatives of seven churches. From that time until his death, he pastored the First Baptist Church in Rocky Mount, North Carolina and, in 1934, he served as the first full-time Executive Secretary for the General Baptist State Convention.

By 1940, Dr. Somerville took on the assignment for which he is most remembered: Executive Secretary of the Lott Carey Baptist Foreign Mission Convention, an organization to which dozens of Virginia churches belong. He served with distinction in this position for more than 55 years when he was unanimously elected Executive Secretary-Treasurer Emeritus, an office he held until his death. During his active tenure, he traveled extensively, making 28 trips aboard and one around the world where he met with foreign leaders in an effort to spread his positive message.

We cherish his memory as his work touched the lives of men, women and youth alike. Mr. President, I commend to the United States Senate and to the American people the life and public service of Dr. Wendell C. Somerville.●

URBAN POLICY, THE RICE FOUNDATION AND NEW YORK UNIVERSITY

● Mr. MOYNIHAN. Mr. President, I rise today to call our attention to a most significant event to be held next week. On March 10, 1998, New York University will honor the generosity and vision of Henry Hart Rice with the first ever Henry Hart Rice Urban Policy Forum on ''The Revitalization of New York City.''

The moderator will be Dr. Mitchell L. Moss who has fittingly been named the Henry Hart Rice Professor of Urban Policy and Planning, a newly endowed chair at New York University. In addition to honoring the remarkable legacy and vision of Mr. Rice, this new chair, according to University President, L. Jay Oliva, ''will play a major role in supporting undergraduate programs in urban policy that will be available to students from all schools of the University.''

The study of urban policy is vital to the future of New York and our nation. Appropriate that it is carried out by as vital and lively an institution as NYU. But let us not lose sight of our history as we look forward. For the longest while we in New York defined ourselves by spectacular public works. The Croton Aqueduct, 1842—pick and shovel all the way for 41 miles to 42nd Street. We built Central Park in two years—more gunpowder than was used at Gettysburg. The Empire State Building —a public work really—14 months. Steam power. But the plain fact is that we have developed a civic culture in which prestige more often goes to those who prevent the city from developing than to those who enable it. The time has come to ask how this came about, and how it might be reversed.

Thus, it is with great anticipation that we look to Professor Moss, the esteemed participants in the Henry Hart Rice Urban Policy Forum, and the committed leaders at NYU, to lead us toward this end.●

FOSTERING FRIENDSHIP AND CO-OPERATION BETWEEN THE UNITED STATES-MONGOLIA

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 320, S. Con. Res 60.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 60) expressing the sense of the Congress in support of efforts to foster friendship and cooperation between the United States and Mongolia, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. CHAFEE. Mr. President, 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 that any statements relating to the resolution appear at this point in the RECORD.

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

The concurrent resolution (S. Con. Res. 60) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 60

Whereas in 1990, Mongolia renounced the Communist form of government and peacefully adopted a series of changes that linked economic development with democratic political reforms;

Whereas the Mongolian people have held 12 presidential elections and 3 parliamentary elections since 1990, all featuring vigorous campaigns by candidates from multiple political parties;

Whereas these elections have been free from violence, voter intimidation, and ballot irregularities, and the peaceful transfer of power from one Mongolian government to another has been successfully completed, demonstrating Mongolia's commitment to peace, stability, and the rule of law;

Whereas every Mongolian government since the end of communism has dedicated itself to promoting and protecting individual freedoms, the rule of law, respect for human rights, freedom of the press, and the principle of self-government, thereby demonstrating that Mongolia is consolidating democratic gains and moving to institutionalize democratic processes;

Whereas Mongolia stands apart as one of the few countries in central and southeast Asia that is truly a fully functioning democracy;

Whereas the efforts of Mongolia to promote economic development through free market economic policies, while also promoting human rights and individual liberties, building democratic institutions, and protecting the environment, serve as a beacon to freethinking people throughout the region and the world;

Whereas the commitment of Mongolia to democracy makes it a critical element in efforts to foster and maintain regional stability throughout central and southeast Asia;

Whereas Mongolia has some of the most pristine environments in the world, which provide habitats to plant and animal species that have been lost elsewhere, and has shown a strong desire to protect its environment through the Biodiversity Conservation Action Plan while moving forward with economic development, thus service as a model for developing nations in the region and throughout the world;

Whereas Mongolia has demonstrated a strong commitment to the same ideals that the United States stands for as a nation, and has indicated a strong desire to deepen and strengthen its relationship with the United States;

Whereas the Mongolian Government has established civilian control of the military—a hallmark of democratic naions—and is now working with parliamentary and military leaders in Mongolia, through the United States International Military Education and Training program, to further develop oversight of the Mongolia military; and

Whereas Mongolia is seeking to develop political and military relationships with neighboring countries as a means of enhancing regional stability: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) Congress—

(A) strongly supports efforts by the United States and Mongolia to use the resources of their respective countries to strengthen political, economic, educational, and cultural ties between the two countries;

(B) confirms the commitment of the United States to an independent, sovereign, secure, and democratic Mongolia;

(C) applauds and encourages Mongolia's simultaneous efforts to develop its democratic and free market institutions;

(D) supports future contacts between the United States and Mongolia in such a manner as will benefit the parliamentary, judicial, and political institutions of Mongolia, particularly through the creation of an interparliamentary exchange between Congress of the United States and the Mongolian parliament;

(E) supports the efforts of the Mongolia parliament to establish United States-Mongolia Friendship Day;

(F) encourages the efforts of Mongolia toward economic development that is compatible with environmental protection and supports an exchange of ideas and information with respect to such efforts between Mongolia and United States scientists;

(G) commends Mongolia for its foresight in environmental protection through the Biodiversity Conservation Action Plan and encourages Mongolia to obtain the goals illustrated in the plan; and

(H) commends the efforts of Mongolia to strengthen civilian control over the Mongolia military through parliamentary oversight and recommends that Mongolia be admitted into the Partnership for Peace initiative at the earliest opportunity; and

(2) it is the sense of Congress that the President—

(A) should, both through the vote of the United States in international financial institutions and in the administration of the bilateral assistance programs of the United States, support Mongolia in its efforts to expand economic opportunity through free market structures and policies;

(B) should assist Mongolia in its efforts to integrate itself into international economic structures, such as the World Trade Organization; and

(C) should promote efforts to increase commercial investment in Mongolia by United States businesses and should promote policies which will increase economic cooperation and development between the United States and Mongolia.

ORDERS FOR FRIDAY, MARCH 6, 1998

Mr. CHAFEE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Friday, March 6, and immediately following the prayer, the routine requests through the morning hour be granted, and the Senate resume consideration of S. 1173, the ISTEA legislation.

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

PROGRAM

Mr. CHAFEE. Mr. President, tomorrow, the Senate will resume consideration of S. 1173, the so-called ISTEA legislation. Under the consent agreement, from 9:30 a.m. to 11 a.m., the Senate will conclude debate on the MCCONNELL amendment regarding contract preferences, with debate equally divided between the opponents and proponents, with 45 minutes of that time equally divided between Senators CHAFEE and BAUCUS. Also, under the agreement, at 11 a.m., the Senate will proceed to a vote on or in relation to the MCCONNELL amendment. Following that vote, the Senate will continue to consider amendments to the ISTEA legislation.

In addition, the Senate may also consider any legislative or executive business cleared for floor action. Therefore, additional votes are possible.

As a reminder to all Members, the first rollcall vote tomorrow will occur at 11 a.m.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. CHAFEE. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:55 p.m., adjourned until Friday, March 6, 1998, at 9:30 a.m.