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House of Representatives

The House was not in session today. Its next meeting will be held on Friday, February 6, 2004, at 12 noon.

Senate

THURSDAY, FEBRUARY 5, 2004

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

PRAYER

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

Let us pray.

Lord of Hosts, Ruler of all nature, we magnify Your name. On today, many lift their hearts in prayer for our Nation. Lord, You have promised that a nation that humbles itself and prays, seeking Your face, will hear from You. You have promised to forgive our sins and to heal our land. Thank You for doing for America immeasurably more than we can ask or imagine. You have blessed us with wonderful freedoms and opportunities to accomplish Your purposes on Earth.

Guide our Senators as they seek to be Your instruments. Empower our leaders to live for Your glory. Protect our military and those who daily risk their lives for freedom.

Lord, we declare today that the kingdom, the power, and the glory belong to You. We pray this in Your awesome Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting Republican leader is recognized.

SCHEDULE

Mr. ROBERTS. Mr. President, this morning following morning business, the Senate resumes consideration of S. 1072, the highway bill. As the majority leader announced last night, it is hoped we will be able to work through those amendments early in the day so we can proceed to additional amendments. Senators should expect votes today as the Senate continues to make progress on the highway bill. Senators will be notified as votes are scheduled.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader.

ORDER OF PROCEDURE

Mr. DASCHLE. Mr. President, I intend to use my leader time this morning. I ask unanimous consent that morning business not be reduced as a result of my use of leader time.

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

KEEPING ALIVE THE WORK AND SPIRIT OF PAUL WELLSTONE

Mr. DASCHLE. Mr. President, I would like to use a few minutes of my leader time to talk about a remarkable new effort that is being launched today to try to develop a broader national consensus about the kind of future we want in America and how we can achieve it. It is called the Wellstone Civic Dialog Project. It is being organized by Wellstone Action, a progressive advocacy organization created by Paul and Sheila Wellstone's sons Mark and David to keep their parents' work and spirit alive.

The first meetings will be held this evening. In what may be the largest book group ever, thousands of ordinary Americans in 40 States will meet in private homes, schools, churches, community centers, bookstores, and hundreds of other places to discuss the direction and the future of our Nation. Those attending the discussion are encouraged to read a book Senator Wellstone wrote which was published the year before he died. It is called ''The Conscience Of A Liberal.'' If the title evokes memories of another book, it is deliberate.

In the introduction of his own book, Paul recalled the good-natured ribbing some of his Republican colleagues gave him when he attended Barry Goldwater's funeral service.

> They gave me Goldwater's ''The Conscience of a Conservative'' to read on the plane. ''Paul,'' they said, ''read this; we read this book at young ages and it set us on the right path. We still have hope for you.''

Paul replied that he, too, had read Senator Goldwater's book at a young age and explained: ''That's why I'm a liberal.''

''But,'' he said, ''I also told them that I admired Barry Goldwater for his political integrity.''

More than almost anyone else I have ever known, Paul Wellstone had an unshakable faith in the fundamental decency of most people and in the genius of democracy. He believed if we

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

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faced our challenges squarely and listened respectfully to each other, we would discover that most of us share the same values, the same concerns, and the same dreams; that we would also discover the solutions and strength to overcome almost any obstacle.

The Wellstone Civic Dialogue Project is an attempt to bring ordinary Americans together to develop a consensus to move America in a more humane, more progressive direction. It is what Paul called ''citizen democracy.''

Groups will meet in more than 600 communities throughout America. In a touch that I am sure Paul Wellstone and Barry Goldwater would have appreciated greatly, in several of the groups self-declared Republicans and Democrats have agreed to sit face to face and discuss their ideas and values.

The first meetings, as I said, will take place this evening in more than 600 communities throughout America. A topic for tonight's discussion is ''Can we dream again?'' It is a reference to a quote by Eleanor Roosevelt that Paul loved and preached often. The future will belong to those ''who believe in the beauty of their dreams.''

It is expected that groups will meet as many as eight additional times over the next several months to discuss issues ranging from education and health care, to domestic violence, money and politics, and the war in Iraq. Anyone interested in attending a Civic Dialog Project discussion can go to the Wellstone Action Web site, www.wellstone.org, to find a discussion group near them or to download study guides for any of the discussion topics.

If there isn't a group in your neighborhood, you might want to consider starting one. The Wellstone Action group has trained hundreds of volunteer facilitators to help people set up and run discussion groups in their own communities.

Before Paul came to the Senate, he was a political science professor. But there was nothing the slightest bit academic or abstract about his politics. He used to say: ''People yearn for a 'politics of the center'—not the 'center' so widely discussed by politicians and pundits in Washington but, rather, a politics that speaks to the center of people's lives: affordable child care, good education for children, health security, living-wage jobs that will support families, respect for the environment and human rights, and clean elections and clean campaigns.

You can see that yearning today in the record turnouts in Presidential caucuses in primaries in Iowa, New Hampshire, and so many other States. Instead of questioning each other's character and motives and patriotism, people want politicians to talk honestly about the concerns at the center of people's everyday lives.

One of the concerns is the refusal by some insurers to provide fair and equitable treatment for people with mental illness. Nothing made Paul angrier nor offended him more deeply than the stigma attached to mental illness and the discrimination and suffering that people with mental health problems suffer as a result of that stigma. He thought it was cruel that people with mental health problems often received lesser care than those with physical health problems. He was outraged by the terrible toll such discrimination often takes on people with mental illness and their families. He and Senator DOMENICI introduced a bill—now called the Paul Wellstone Mental Health Equitable Treatment Act—to end such discrimination. The bill was reintroduced at the beginning of this Congress, but it has been stalled in committee for more than a year now because of opposition from the insurance industry and its allies.

Last October, on the first anniversary of the plane crash that killed Paul and Sheila, their daughter Marcia, and four others, I asked unanimous consent that the Senate take up and pass the Wellstone Mental Health and Treatment Act. It would have been the perfect tribute to Paul.

The Republican leadership blocked that request. But they gave us their word that the Senate will consider the Wellstone mental health bill early this year. I am here to say, very clearly, that Democrats intend to hold them to that promise.

Like tens of millions of Americans, Paul Wellstone knew well the anguish that mental illness can cause families.

Nearly 50 years ago, when his older brother Stephen was a freshman in college, he suffered a severe mental breakdown. Stephen Wellstone spent the next 2 years in mental hospitals. Eventually, he recovered and graduated from college—with honors—in 3 years. But it took his immigrant parents 20 years to pay off the bill from those 2 years.

In his book, Paul recalled the years that Stephen was hospitalized. ''For two years,'' he wrote, ''the house always seemed dark to me—even when the lights were on. It was such a sad home.''

Fifty years later, there are still far too many sad homes in America; there are still far too many families that are being devastated by the physical and financial consequences of mental health problems. In many cases, they have health insurance. But their insurance companies refuse to pay for the mental health care they or their loved ones need.

I hear from such families every week.

Three days ago, a woman from Sioux Falls called my office. She is about 50. She and her husband have two children, and they have health insurance through his job. Years ago, she suffered one of the most agonizing losses a person can endure: Her 3-year-old daughter died from spinal meningitis.

She now suffers from chronic depression, which she manages with the help of medication and therapy.

Recently, the cost of her medication jumped from $100 a month to $500 a month, and her insurance company informed her that she has now hit their lifetime cap on mental health benefits, so they will no longer pay anything for her medications or her therapy.

So she and her husband now face a choice: pay the entire cost of her prescriptions and her therapy each month, out of pocket, or pay their mortgage.

She was fighting back tears when she called my office. She said, ''If I had a heart ailment, they wouldn't think twice about sending me to a cardiologist. But there's such a stigma associated with mental health.''

She added, ''This isn't something I've chosen any more than people who suffer from diabetes or heart disease chose their conditions.''

What makes her story even more terrible is how many other people in this country are having to fight the same fight, and make the same awful choices. No family is untouched by mental health problems. Fifty-four million Americans suffer from some form of mental illness. They include Republicans, Democrats, and people who don't care at all about party labels.

Paul Wellstone and PETE DOMENICI were about as far apart politically as two people could be. But they shared a common bond: They both had people in their families, who they loved, who were affected by mental illness. They were unlikely but great allies.

In 1996, thanks in large part to their leadership, Congress passed the Mental Health Parity Act. It says that group health plans sponsored by employers with 50 or more workers cannot place annual or lifetime dollars limits on mental health benefits that are more restrictive than their limits for physical health care.

It was an important step forward. But discrimination persists; we know that. Some insurers openly disregard the law. Some have found new ways to restrict mental health benefits. The results can be devastating: unemployment, broken homes, shattered lives, poverty, poor school performance—even suicide.

The Paul Wellstone Mental Health Equitable Treatment Act does not force employers to offer mental health coverage. It simply says that if employers offer mental health benefits, insurers cannot provide more restrictive coverage for mental health benefits than they do for other medical and surgical benefits.

Some insurers already meet this basic fairness standard. They are to be commended for doing the right thing. But others will not do the right thing unless they are required by law to do so. So Congress needs to act.

The insurance industry claims—incorrectly—that requiring insurers to treat mental illness the same way they treat physical illness will drive premiums up so high that more people will lose their health insurance. Their claims are not true. They are simply scare tactics; we've heard them before.

The truth is, two highly respected organizations have analyzed the Paul Wellstone Mental Health Equitable Treatment Act. The private accounting firm of PricewaterhouseCoopers predicts the bill would increase health insurance premiums by one percent. One percent. That works out to $1.32 per month. The Congressional Budget Office predicts an even smaller average increase: nine-tenths of 1 percent. I think most families would consider that was a very good deal.

Senators DOMENICI and Wellstone modeled their bill on the mental health parity provisions on the Federal Employee Health Benefits Program. For 3 years, Senators and the other 8.5 million members of that program have had the protection of genuine mental health parity. According to the Office of Personnel Management, it has increased premiums only 1.3 percent. And that includes parity for substance abuse services, which are not included in the Wellstone mental health bill.

Nearly 2 years ago, President Bush said, ''Our country must make a commitment: Americans with mental illness deserve our understanding and they deserve excellent care. They deserve a health care system that treats their illness with the same urgency as physical illness.'' We urge the President to back up his words with leadership.

The Paul Wellstone Mental Health Equitable Treatment Act is cosponsored by 68 Senators—more than two-thirds of this Senate. It is also supported by more than 360 national organizations—90 of which have added their support just since October.

Groups endorsing the Wellstone bill include the American Academy of Pediatrics, the Alzheimer's Association, the National PTA, the Evangelical Lutheran Church in America, Catholic Charities, the National Association of Counties, the American Medical Association, the American Nurses Association, the American Association of Pastoral Counselors, the Christopher Reeve Paralysis Foundation, the National Rural Health Association, the National Organization on Fetal Alcohol Syndrome, and many other groups.

I ask unanimous consent that the complete list be inserted at the close of my remarks in the CONGRESSIONAL RECORD.

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

(See exhibit 1.)

Mr. DASCHLE. Mr. President, nearly 50 years after mental illness brought such sadness and financial strain to Paul Wellstone, doctors and scientists have made great strides in understanding and treating many mental health problems. But those advances mean little to those who cannot afford them.

In South Dakota and throughout America, there are still too many homes that seem dark even when the lights are on. There are too many people who are being denied essential mental health care because of arbitrary decisions by insurance companies putting profits ahead of people.

The Wellstone bill can change that. We have a commitment from the Majority Leader that the Senate will deal with this issue early this year. We are determined to see that that happens.

I yield the floor.

EXHIBIT 1

361 ORGANIZATIONS SUPPORTING THE PAUL WELLSTONE MENTAL HEALTH EQUITABLE TREATMENT ACT (DOMENICI/KENNEDY (S. 486) AND KENNEDY/RAMSTAD (H.R. 953)), JANUARY 29, 2004

Advocates for Youth
Alaska State Medical Association
Alliance for Aging Research
Alliance for Children and Families
Alliance For Mental Health Consumers Rights
Alzheimer's Association
American Academy of Child and Adolescent Psychiatry
American Academy of Cosmetic Surgery
American Academy of Family Physicians
American Academy of Neurology
American Academy of Ophthalmology
American Academy of Otolaryngology-Head and Neck Surgery
American Academy of Pediatrics
American Academy of Physical Medicine and Rehabilitation
American Academy of Physician Assistants
American Academy of Psychiatry and the Law
American Academy of Sleep Medicine
American Association for Geriatric Psychiatry
American Association For Marriage and Family Therapy
American Association for Psychological Rehabilitation
American Association for Thoracic Surgery
American Association of Children's Residential Centers
American Association of Clinical Endocrinologists
American Association of Pastoral Counselors
American Association of Practicing Psychiatrists
American Association of School Administrators
American Association of Suicidology
American Association on Mental Retardation
American Board of Examiners in Clinical Social Work
American College of Cardiology
American College of Chest Physicians
American College of Emergency Physicians
American College of Medical Genetics
American College of Mental Health Administration
American College of Nurse-Midwives
American College of Obstetricians and Gynecologists
American College of Occupational and Environmental Medicine
American College of Osteopathic Family Physicians
American College of Osteopathic Surgeons
American College of Physicians
American College of Preventive Medicine
American College of Radiology Association
American College of Surgeons
American Congress of Community Supports and Employment Services (ACCSES)
American Counseling Association
American Diabetes Association
American Family Foundation
American Federation of State, County and Municipal Employees
American Federation of Teachers
American Foundation for Suicide Prevention
American Gastroenterological Association
American Geriatrics Society
American Group Psychotherapy Association
American Heart Association
American Hospice Foundation
American Hospital Association
American Humane Association
American Jail Association
American Managed Behavioral Healthcare Association (AMBHA)
American Medical Association
American Medical Directors Association
American Medical Group Association
American Medical Rehabilitation Providers Association
American Medical Student Association
American Mental Health Counselors Association
American Music Therapy Association
American Network of Community Options and Resources
American Nurses Association
American Occupational Therapy Association
American Orthopaedic Foot and Ankle Society
American Orthopsychiatric Association
American Osteopathic Academy of Orthopedics
American Osteopathic Association
American Pediatric Society
American Political Science Association
American Psychiatric Association
American Psychiatric Nurses Association
American Psychoanalytic Association
American Psychological Association
American Psychotherapy Association
American Public Health Association
American School Counselor Association
American School Health Association
American Society for Adolescent Psychiatry
American Society for Clinical Pathology
American Society of Addiction Medicine
American Society of Anesthesiologists
American Society of Clinical Oncology
American Society of Clinical Pharmacology
American Society of Plastic Surgeons
American Therapeutic Recreation Association
American Thoracic Society
America's HealthTogether
Anna Westin Foundation
Anorexia Nervosa and Related Eating Disorders, Inc.
Anxiety Disorders Association of America
Arizona Medical Association
Arkansas Medical Society
Association for the Advancement of Psychology
Association for Ambulatory Behavioral Healthcare
Association for Clinical Pastoral Education, Inc.
Association for Science in Autism Treatment
Association of American Medical Colleges
Association of Asian Pacific Community Health Organizations
Association of Jewish Aging Services of North America
Association of Jewish Family & Children's Agencies
Association of Material and Child Health Programs
Association of Medical School Pediatric Department Chairs
Association of Orthopaedic Foot and Ankle Surgeons
Association of University Centers on Disabilities
Association to Benefit Children
Attention Deficit Disorders Association
Austism Society of America
Barbara Schneider Foundation
Bazelon Center for Mental Health Law
Brain Injury Association of America, Inc.
California Medical Association
Camp Fire USA
The Carter Center
Catholic Charities USA

Center for the Advancement of Health
Center for Women Policy Studies
Center for Disability and Health
Center on Juvenile and Criminal Justice
Central Conference of American Rabbis
Chicago Public Schools
Child & Adolescent Bipolar Foundation
Child Neurology Society
Children and Adults with Attention-Deficit/Hyperactivity Disorder
Children's Defense Fund
Children's Healthcare Is a Legal Duty
Children's Hospital Boston
Child Welfare League of America
Crhistopher Reeve Paralysis Foundation
Church of the Brethren Washington Office
Clinical Social Work Federation
Coalition for Juvenile Justice
College of Psychiatric and Neurologic Pharmacists
Colorado Medical Society
Commission on Social Action of Reform Judaism
Connecticut State Medical Society
Corporation for the Advancement of Psychiatry
Council for Exceptional Children
Council of State Administrators of Vocational Rehabilitation
Council on Social Work Education
County of Santa Clara, CA
Cure Autism Now
Dads and Daughters
Depression and Bipolar Support Alliance
Disability Rights Education and Defense Fund, Inc.
Disability Service Providers of America
Division for Learning Disabilities (DLD) of the Council for Exceptional Children
Easter Seals
Eating Disorders Coalition for Research, Policy & Action
Employee Assistance Professionals Association
Epilepsy Foundation
Families For Depression Awareness
Families USA
Family Violence Prevention Fund
Family Voices
Federation of American Hospitals
Federation of Behavioral, Psychological & Cognitive Sciences
Federation of Families for Children's Mental Health
Florida Medical Association
Freedom From Fear
Friends Committee on National Legislation (Quaker)
Harvard Eating Disorders Center
Hawaii Medical Association
Human Rights Campaign
Idaho Medical Association
Illinois State Medical Society
Inclusion Research Institute
Indiana State Medical Association
Institute for the Advancement of Social Work Research
International Association of Jewish Vocational Services
International Association of Psychosocial Rehabilitation Services
International Community Corrections Association
International Dyslexia Association
International Society of Psychiatric-Mental Health Nurses
International Spinal Injection Society
Iowa Medical Society
Iris Alliance Fund
Jewish Federation of Metropolitan Chicago
Johnson Institute
Joint Council of Allergy, Asthma and Immunology
Kentucky Medical Association
Kids Project
Kristen Watt Foundation for Eating Disorder Awareness
Latino Behavioral Health Association
Learning Disabilities Association of America
Legal Action Center
Louisiana State Medical Society
Lutheran Ofc. for Governmental Affairs, Evangelical Lutheran Church in America
Lutheran Services in America
Maine Medical Association
Massachusetts Medical Society
MedChi, the Maryland State Medical Society
Medical Association of Georgia
Medical Association of the State of Alabama
Medical Group Management Association
Medical Society of Delaware
Medical Society of the District of Columbia
Medical Society of New Jersey
Medical Society of the State of New York
Medical Society of Virginia
Medicare Rights Center
MentalHealth AMERICA, Inc.
Michigan State Medical Society
Minnesota Medical Association
Mississippi State Medical Association
Missouri State Medical Association
Montana Medical Association
NAADAC, The Association for Addiction Professionals
National Advocacy Center of the Sisters of the Good Shepherd
National Alliance for Autism Research
National Alliance for the Mentally Ill
National Alliance for Research on Schizophrenia and Affective Disorders
National Alliance to End Homelessness
National Asian American Pacific Islander Mental Health Association
National Asian Women's Health Organization
National Assembly of Health and Human Services Organizations
National Association for the Advancement of Colored People (NAACP)
National Association for the Advancement of Orthotics & Prosthetics
National Association for Children's Behavioral Health
National Association for the Dually Diagnosed
National Association for Medical Direction of Respiratory Care
National Association for Rural Mental Health
National Association of Anorexia Nervosa and Associated Disorders—ANAD
National Association of Case Management
National Association of Children's Hospitals
National Association of Community Health Centers
National Association of Counties
National Association of County Behavioral Health Directors
National Association of County and City Health Officials
National Association of Developmental Disabilities Councils
National Association of Mental Health Planning & Advisory Councils
National Association of Pediatric Nurse Practitioners
National Association of Protection and Advocacy Systems
National Association of Psychiatric Health Systems
National Association of School Nurses
National Association of School Psychological
National Association of Social Workers
National Association of State Directors of Special Education
National Association of State Mental Health Program Directors
National Center for Policy Research for Women & Families
National Center on Institutions and Alternatives
National Coalition Against Domestic Violence
National Coalition for the Homeless
National Coalition of Mental Health Consumers and Professionals
National Committee to Preserve Social Security and Medicare
National Council for Community Behavioral Healthcare
National Council of Jewish Women
National Council of La Raza
National Council on the Aging
National Council on Alcoholism and Drug Dependence
National Council on Family Relations
National Council on Problem Gambling
National Council on Suicide Prevention
National Down Syndrome Congress
National Down Syndrome Society
National Eating Disorders Association
National Educational Alliance for Borderline Personality Disorder
National Education Association
National Exchange Club Foundation
National Foundation for Depressive Illness
National Health Council
National Health Law Program
National Hispanic Medical Association
National Hopeline Network
National Housing Conference
National Latino Behavioral Health Association
National Law Center on Homelessness & Poverty
National Leadership on African American Behavioral Health
National League of Cities
National Medical Association
National Mental Health Association
National Mental Health Awareness Campaign
National Multiple Sclerosis Society
National Network for Youth
National Organization for Rare Disorders
National Organization of People of Color Against Suicide
National Organization on Fetal Alcohol Syndrome
National Osteoporosis Foundation
National Partnership for Women and Families
National PTA
National Recreation and Park Association
National Rural Health Association
National Schizophrenia Foundation
National Senior Citizens Law Center
National Therapeutic Recreation Society
National Treatment and Research Advancements Association for Personality Disorder
Native American Counseling, Inc.
Nebraska Medical Association
NETWORK, a Catholic Social Justice Lobby
Nevada State Medical Association
New Hampshire Medical Society
New Mexico Medical Society
NISH (National Industries for the Severely Handicapped)
Northamerican Association of Masters in Psychology
North Carolina Medical Society
North Dakota Medical Association
Obsessive Compulsive Foundation
Office & Professional Employees International Union
Ohio State Medical Association
Oklahoma State Medical Association
Older Adult Consumer Mental Health Alliance
Oregon Medical Association
Organization of Student Social Workers
Partnership for Recovery
People For the American Way
Pennsylvania Medical Society
Presbyterian Church (USA), Washington Office
Prevent Child Abuse America
Rebecca Project for Human Rights
Renfrew Center Foundation
Rhode Island Medical Society
Samaritans Suicide Prevention Center

School Social Work Association of America
Service Employees International Union
Shaken Baby Alliance
Sjogren's Syndrome Foundation
Society for Adolescent Medicine
Society for Pediatric Research
Society for Personality Assessment
Society for Public Health Education
Society for Research on Child Development
Society for Social Work Research
Society for Women's Health Research
Society of American Gastrointestinal Endoscopic Surgeons
Society of Medical Consultants to Armed Forces
Society of Professors of Child and Adolescent Psychiatry
Society of Thoracic Surgeons
South Carolina Medical Association
South Dakota State Medical Association
STOP IT NOW!
Suicide Awareness Voice of Education
Suicide Prevention Action Network USA
Tennessee Medical Association
Texas Medical Association
The Arc of the United States
Title II Community AIDS National Network
Tourette Syndrome Association
Treatment and Research Advancements Association of Personality Disorder
Union of American Hebrew Congregations
Unitarian Universalist Association of Congregations
United Cerebral Palsy Association
United Church of Christ, Justice and Witness Ministry
United Jewish Communities
United Methodist General Board of Church and Society
Utah Medical Association
Vermont Medical Society
Volunteers of America
Washington State Medical Association
Wellstone Action
West Virginia State Medical Association
Wisconsin Medical Society
Working Assets
Women of Reform Judaism
Wyoming Medical Society
Yellow Ribbon Suicide Prevention Program
Youth Law Center

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there now will be a period for the transaction of morning business until 10:40 a.m. with the first 22 minutes under the control of the Senator from Kansas, Mr. ROBERTS, or his designee; the following 22 minutes under the control of the Senator from Florida, Mr. GRAHAM, or his designee; the following 22 minutes under the control of the majority leader or his designee; and the final 22 minutes under the control of the Senator from California, Mrs. FEINSTEIN, or her designee. Under the unanimous consent agreement just entered, this time shall not be diminished by the minority leader having used his time.

The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, Senator GRAHAM and I have conferred. He has a scheduling conflict. So I ask unanimous consent that he be recognized first. I think that is his intent.

The PRESIDENT pro tempore. Without objection, the Senator from Florida is recognized for 22 minutes.

Mr. GRAHAM of Florida. Mr. President, I thank my friend and colleague for his graciousness. I also commend him for the leadership he has been providing to this body, particularly as the chair of the Intelligence Committee. That is the subject of my remarks today.

THE NEED FOR INTELLIGENCE REFORM, PART III

Mr. GRAHAM of Florida. Mr. President, during this week, I have spoken—and this will be the third statement—about the need to reform our Nation's intelligence agencies. I have suggested that the horrific acts of September 11, 2001—acts which killed nearly 3,000 Americans in New York, Washington, and Pennsylvania—could have been avoided if our intelligence agencies had been more organized and more focused in dealing with the threat of international terrorism. These conclusions were largely the result of the work of the House-Senate joint inquiry on September 11, 2001. This bicameral, bipartisan committee finished its investigation on December 20, 2002, and filed its report. In that report, it concluded there were a number of problems with our existing intelligence networks and it made 19 recommendations of how to fix those problems.

Repairing the flaws in our intelligence community is a matter of national security, a matter of the highest importance and urgency. As we are now learning in the context of the war with Iraq and Saddam Hussein's weapons of mass destruction, policymakers cannot make wise decisions affecting the security of American people without timely, accurate, credible information, and tough-minded, independent analysis, and will use that information to shape the judgments of the President and other decisionmakers, not to validate previously held opinions. If we fail to accurately perceive future threats, we will be poorly prepared to respond to them. If we do not perceive current threats accurately, then our response may be either inadequate or excessive.

Whether restraining the development of proliferation of weapons of mass destruction or interdicting terrorists, now, more than ever, intelligence matters. If there is another terrorist attack on American soil, the American people will demand to know what the Congress, what the President, what other governmental institutions learned from the September 11 attacks, and now the prewar intelligence in Iraq, and how that information was used to protect them. There will be no avoidance of accountability for the next attack, either for Congress or the President. We must take our responsibility seriously.

Further, we must recognize that every day needed intelligence reforms are delayed is a day of unnecessary risk for the American people. Unfortunately, with regard to the recommendations of the joint inquiry committee, very little has been accomplished to date. In my two previous statements, I discussed the status of these recommendations dealing with the intelligence community reform and specific responses to terrorism. I particularly commend Senator DIANNE FEINSTEIN for her leading role in the area of reorganization of the intelligence community.

Today I will turn to two additional areas of particular concern: the Federal Bureau of Investigation and the application of the Foreign Intelligence Surveillance Act, or FISA, which governs the use of electronic eavesdropping on foreign nationals in the United States. Here, I particularly recognize the contributions of Senators DEWINE, DURBIN, EDWARDS, and KYL to this section of our report.

We know now the FBI did not have or did not give adequate attention and resources to the problem of terrorism prior to September 11, 2001. For the FBI, terrorism was a lesser priority and its personnel did not understand the FISA and therefore did not use effectively its available investigative authority. Important information was not shared with other agencies, was not shared even within the various branches of the FBI itself. During the summer of 2001, separate parts of the FBI had information that could have been used to disrupt or destroy al-Qaida's hijacking plot, but that information was never collectively analyzed.

For example, what agents in Minnesota knew about Zacaria Moussaoui, the so-called twentieth hijacker who was taken into custody in August of that year, is he was studying to fly commercial airlines but was disinterested in either taking them off or landing them. Meanwhile, a Phoenix field agent of the FBI had become suspicious of radical Islamists who were also learning to fly airplanes. An agent in San Diego was working with an informant who knew at least two of the hijackers. The informant was aware that one of the future hijackers was moving to Arizona with a fellow terrorist—again to attend flight school.

If these agents had been aware of each other's activities or if the analysts at FBI headquarters had connected these geographically separate events, portions of the September 11 plot might well have been uncovered and disrupted. Unfortunately, the FBI lacked the sufficient number of analysts to process all the relevant information, and barriers to sharing information prevented agents from learning about each other's activities, even though both the Phoenix memo which expressed concern that bin Laden was sending young recruits to the United States for pilot training and the

Moussaoui investigation were handled by the same unit at FBI headquarters.

Furthermore, although existing laws gave FBI agents the authority to pursue these leads, individual agents were in some cases unaware of their powers under the Foreign Intelligence Surveillance Act and this confusion prevented them from pursuing aggressively potentially helpful lines of investigation.

With these facts in mind, the joint inquiry made four recommendations related to the FBI and FISA which I will now discuss.

Recommendation No. 6 calls for the FBI to improve its domestic intelligence capability as fully and as quickly as possible and to establish clear counterterrorism priorities for the agency to follow. Specific areas for improvement are mentioned, including the need to improve analytical capability, the need to disseminate intelligence information within the FBI and among Government agencies, the need to improve knowledge of national security laws, the need to hire more personnel with linguistic skills, and the need to fix persistent information technology problems.

Our joint inquiry report gives a thorough explanation of why each of these improvements is necessary. In the years leading up to September 11, the FBI was faced with a shortage of counterterrorism personnel partly due to a lack of overall resources, partly because counterterrorism priorities were not clearly established or followed. In particular, the number of qualified intelligence analysts was at a critically low level. This is the reason the memo from the FBI agent in the Phoenix field office did not generate any further discussion or analysis and is also the reason no one at the FBI headquarters was able to connect the dots and see that information collected by the FBI in California, in Minnesota, in Arizona was all related to a larger terrorist plot. The analyst shortage was compounded by outdated information technologies and the lack of a good counterterrorism database which made it difficult for analysts to assess and organize crucial information.

Prior to September 11, the FBI also had a severe shortage of linguists. For example, 35 percent of all materials collected by the FBI in the Arabic language were not even reviewed because there were not enough persons within the FBI to translate that material. This one fact may have deprived the Bureau of potentially valuable terrorist-related intelligence which could have avoided September 11. Even in those cases where the Bureau did collect and identify information on terrorist activity, it failed to share that information with other agencies, both inside and outside the intelligence community.

For example, if the Federal Aviation Authority had been told in August of 2001 that the FBI had identified a potential airline suicide hijacker in Minnesota, the FAA would have had at least the opportunity to increase security precautions on domestic flights such as by reinforcing the doors between the cockpit and the passenger cabin. Tragically, this did not happen.

I am pleased to report some improvement has been made in these problem areas. In 2003, the Bureau developed a strategic plan outlining its top counterterrorism priorities. It has also increased hiring and training and many agents have been permanently reassigned to high priority areas. However, while hiring and training have increased, the General Accounting Office has suggested the FBI continues to lack fully adequate analytical capability and that the Bureau continues to face a shortage of linguists and information technology personnel as well as administrative staff.

Even more troubling is the fact that officials in Federal agencies, State governments, and local levels continue to report they do not consider the current information-sharing system to be effective. With few exceptions, these individuals say they are not receiving all the information they need to fulfill their responsibilities as the front line of our war against terrorism.

In some cases this is because information is simply not available. But too often it is because of institutional practices that prevent important information from being shared. Even when information is disseminated, officials at all three levels report that it is frequently inaccurate, irrelevant, and not received in a timely fashion.

This situation is made worse by the fact that none of these problems are new. In the year 2000, two separate commissions on national security pointed to these same weaknesses within the FBI and urged that they be corrected.

The National Commission on Terrorism, also known as the Bremer commission, issued its report in June of 2000, and the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, known as the Gilmore commission, issued its second report the following December.

Both commissions stated that the FBI needed to improve its analytical capability and disseminate information in a more timely manner inside and outside the Bureau.

The two commissions also suggested that FISA gave the FBI more investigative powers than were currently being used, and the Gilmore commission suggested that this was due to misunderstanding and confusion regarding the law. The Bremer commission also called attention to the shortage of skilled linguists within the agency, which is a problem that we still face today.

Since September 11, FBI Director Mueller has initiated a serious and sustained effort to reform and reshape the FBI to fight terrorism. Progress has been made. However, much is left to be done.

One particular area of concern is the information technology systems at the FBI. The computer and communication systems at the FBI have been notoriously outdated.

I recall a meeting at one of our CIA stations in the Middle East during which the agency personnel pleaded with the Members of Congress who were present to push the FBI toward adopting computer systems that would be compatible with the CIA's so that basic information could be shared.

A recent report by the General Accounting Office on this subject is highly critical of the FBI's attempts to improve its information technology systems. As we saw in our investigation of the September 11 attacks, the best work of skilled agents is wasted if they cannot communicate it to those who will use it. We cannot rest until we are certain the FBI has made all the changes it so desperately needs.

Recommendation No. 7 advises the Congress and the administration to evaluate and consider changes to the domestic intelligence sector.

In the short term, our national security interests are best served by taking actions to improve the capabilities of the FBI. However, over the long term, we must decide on the best way to organize our domestic intelligence agencies and consider serious restructuring if we conclude that the current structure is inadequate to serve our national security interests.

The joint inquiry recommended that FISA be included in this review. This recommendation reflects concerns that the FBI, which is primarily a law enforcement organization, is inherently ill-suited to the challenge of domestic intelligence gathering.

While the agency has done a commendable job carrying out its law enforcement missions, preventing attacks before they occur requires an approach very different from finding and punishing criminals after they have acted. Throughout its history, the FBI's focus has been on investigating crime and arresting criminals rather than preventing crime.

The lapses that preceded 9/11 may therefore be in part the consequence of requiring the same agency to carry out two very different functions. One example of this tendency of the FBI is how it defines investigatory targets. It tends to do so in terms of those that are likely to result in a prosecution as opposed to those that pose the greatest threat.

I recall during one of our Senate Intelligence Committee hearings a senior FBI official was asked to provide an estimate of the number of suspected terrorists within a specific region of the country. He responded by giving us the number of open investigative files at a certain field office—clearly a law enforcement methodology rather than the approach that an intelligence agency would take. I would note that none of the 19 hijackers of September 11 had an open FBI file that would have

marked them as a suspected terrorist in our midst.

Our recommendations on the FBI consisted of three parts: First, we said in the short term we should do everything possible to strengthen the capability of the FBI to fight the war on terror. The FBI is all we have at the present time, and we need to make it as effective as possible.

Second, we need to conduct an open debate on the type of domestic intelligence that we as a nation want and need. We can look to other nations for models which are based on the perceived threat within the borders of each of those nations. They range from the extremely high level of surveillance that the Israeli Government exercises to protect its citizens from internal terrorist threats to the resistance to scrutiny of private citizens in certain regions of Germany.

Third, we need to evaluate the enhanced capability of the FBI against the model that we establish as our desired end state, and then determine if our security needs could be better met by creating a separate domestic intelligence agency, leaving the FBI to focus on law enforcement priorities. That model exists in Great Britain, where Scotland Yard, like the FBI, handles national domestic law enforcement matters, but there is a separate agency, the MI5, which performs domestic intelligence gathering.

To date, no changes have been made to FISA since we issued our report, nor has the larger debate regarding the structure of our domestic intelligence community taken place.

Our joint committee called for Congress to request a report from the administration regarding the structure of our domestic intelligence program. So far, no action has been taken on this recommendation.

Recommendation No. 8 calls for the Attorney General and the FBI to assure that the FBI uses its powers effectively and disseminates information quickly. In particular, it calls for FBI personnel to receive in-depth training on the Foreign Intelligence Surveillance Act and to implement a plan to use FISA to assess the threat of terrorist groups within the United States. It specifically refers to the need to identify whether and how any of these groups receive funding or support from foreign governments.

The need for clearer guidelines and better training regarding the FISA was made abundantly clear during the FBI's investigation of Zacharias Moussaoui. Agents in Minnesota correctly suspected that he was involved in a hijacking plot, but even after he was detained by the Immigration and Naturalization Service, the agents concluded that FISA did not give them the authority to search his belongings since it was not established that Moussaoui was acting as an agent of a foreign power.

This conclusion was incorrect under the FISA law. It demonstrates the significant confusion and ambiguity that has developed surrounding the use of FISA and that reform is important and urgent.

FISA is also one of the best tools we have for tracking terrorist funding. However, it is not always used to its fullest potential. For example, the chief of the FBI's Financial Crimes Section told our committee that if asked, he would have been able to locate hijackers Nawaf al-Hazmi and Khalid al-Mindhar by tracking credit card and banking transactions. These same powers could have been used by the FBI to track foreign sources of terrorist funding, with the aim of cutting off funds for terrorists and attacking these sources of funding directly.

The FBI has made significant progress in increasing awareness and knowledge of FISA. The Attorney General has issued new guidelines regarding terrorist investigations, and both current personnel and new hires are now receiving training on these guidelines.

Unfortunately, the Bureau has not made very good progress identifying foreign sources of funding for terrorist groups within the United States.

As an example, as I emphasized in my previous statements, the joint inquiry uncovered significant evidence of foreign government involvement in the 9/11 attacks, and raised the possibility that foreign governments continue to provide support to terrorist groups within the United States.

In spite of this alarming assessment, the FBI has not even developed an effective plan to assess the threat of foreign funding for terrorist groups, let alone combat this threat.

The USA PATRIOT Act and subsequent modifications have given the Bureau expanded access to banking and financial records, but it has been widely noted that terrorist groups use alternative methods of collecting, moving, and storing their money.

These methods include illegal drugs and other contraband; shipment of gems and other commodities; informal financial networks, such as the hawala system; and nontransparent organizations, such as charities and religious organizations.

The FBI, which is responsible for leading these investigations into terrorist financing, has acknowledged it does not systematically collect and analyze data on alternative financing mechanisms. Unless al-Qaida develops a policy of transferring money entirely by ATMs, the FBI's current investigatory methods are unlikely to be very effective.

The final recommendation of this report is No. 9, which urges the House and Senate Intelligence and Judiciary Committees to evaluate the FISA, and all modifying legislation, such as the USA PATRIOT Act, to ensure that our legal system adequately addresses current and future terrorist threats. These House and Senate committees have effectively begun to follow through on this task, and I am confident they will continue to do so.

This last report is one bright spot on an otherwise disappointing report card.

In evaluating the status of the joint inquiry's recommendations, I have tried to give due attention to those areas in which progress has been made. However, we must not ignore those shortcomings that remain, particularly when so many of them are of such a serious nature. We must overcome bureaucratic inertia and organizational difficulties to fix these problems in an effective and expeditious manner. We must not continue to be a slave to the status quo. Our national security and the well-being of the American people demand nothing less, as does the memory of nearly 3,000 innocent American lives lost on September 11, 2001.

I ask unanimous consent that the recommendations of the Joint Inquiry Committee, as adopted on December 10, 2002, be printed in the RECORD.

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

RECOMMENDATIONS—DECEMBER 10, 2002

Since the National Security Act's establishment of the Director of Central Intelligence and the Central Intelligence Agency in 1947, numerous independent commissions, experts, and legislative initiatives have examined the growth and performance of the U.S. Intelligence Community. While those efforts generated numerous proposals for reform over the years, some of the most significant proposals have not been implemented, particularly in the areas of organization and structure. These Committees believe that the cataclysmic events of September 11, 2001 provide a unique and compelling mandate for strong leadership and constructive change throughout the Intelligence Community. With that in mind, and based on the work of this Joint Inquiry, the committees recommend the following:

1. Congress should amend the National Security Act of 1947 to create and sufficiently staff a statutory Director of National Intelligence who shall be the President's principal advisor on intelligence and shall have the full range of management, budgetary and personnel responsibilities needed to make the entire U.S. Intelligence Community operate as a coherent whole. These responsibilities should include: Establishment and enforcement of consistent priorities for the collection, analysis, and dissemination of intelligence throughout the Intelligence Community; setting of policy and the ability to move personnel between elements of the Intelligence Community; review, approval, modification, and primary management and oversight of the execution of Intelligence Community budgets; review, approval modification, and primary management and oversight of the execution of Intelligence Community personnel and resource allocations; review, approval, modification, and primary management and oversight of the execution of Intelligence Community research and development efforts; review, approval, and coordination of relationships between the Intelligence Community agencies and foreign intelligence and law enforcement services; and exercise of statutory authority to insure that Intelligence Community agencies and components fully comply with Community-wide policy, management, spending, and administrative guidance and priorities.

The Director of National Intelligence should be a Cabinet level position, appointed

by the President and subject to Senate confirmation. Congress and the President should also work to insure that the Director of National Intelligence effectively exercises these authorities.

To insure focused and consistent Intelligence Community leadership, Congress should require that no person may simultaneously serve as both the Director of National Intelligence and the Director of the Central Intelligence Agency, or as the director of any other specific intelligence agency.

2. Current efforts by the National Security Council to examine and revamp existing intelligence priorities should be expedited, given the immediate need for clear guidance in intelligence and counterterrorism efforts. The President should take action to ensure that clear, consistent, and current priorities are established and enforced throughout the Intelligence Community. Once established, these priorities should be reviewed and updated on at least an annual basis to ensure that the allocation of Intelligence Community resources reflects and effectively addresses the continually evolving threat environment. Finally, the establishment of Intelligence Community priorities, and the justification for such priorities, should be reported to both the House and Senate Intelligence Committees on an annual basis.

3. The National Security Council, in conjunction with the Director of National Intelligence, and in consultation with the Secretary of the Department of Homeland Security, the Secretary of State and Secretary of Defense, should prepare, for the President's approval, a U.S. government-wide strategy for combating terrorism, both at home and abroad, including the growing terrorism threat posed by the proliferation of weapons of mass destruction and associated technologies. This strategy should identify and full engage those foreign policy, economic, military, intelligence, and law enforcement elements that are critical to a comprehensive blueprint for success in the war against terrorism.

As part of that effort, the Director of National Intelligence shall develop the Intelligence Community component of the strategy, identifying specific programs and budgets and including plans to address the threats posed by Usama Bin Ladin and al Qa'ida, Hezbollah, Hamas, and other significant terrorist groups. Consistent with applicable law, the strategy should effectively employ and integrate all capabilities available to the Intelligence Community against those threats and should encompass specific efforts to: Develop human sources to penetrate terrorist organizations and networks both overseas and within the United States; fully utilize existing and future technologies to better exploit terrorist communications; to improve and expand the use of data mining and other cutting edge analytical tools; and to develop a multi-level security capability to facilitate the timely and complete sharing of relevant intelligence information both within the Intelligence Community and with other appropriate federal, state, and local authorities; enhance the depth and quality of domestic intelligence collection and analysis by, for example, modernizing current intelligence reporting formats through the use of existing information technology to emphasize the existence and the significance of links between new and previously acquired information; maximize the effective use of covert action in counterterrorist efforts; develop programs to deal with financial support for international terrorism; and facilitate the ability of CIA paramilitary units and military special operations forces to conduct joint operations against terrorist targets.

4. The position of National Intelligence Officer for Terrorism should be created on the National Intelligence Council and a highly qualified individual appointed to prepare intelligence estimates on terrorism for the use of Congress and policymakers in the Executive Branch and to assist the Intelligence Community in developing a program for strategic analysis and assessments.

5. Congress and the Administration should ensure the full development within the Department of Homeland Security of an effective all-source terrorism information fusion center that will dramatically improve the focus and quality of counterterrorism analysis and facilitate the timely dissemination of relevant intelligence information, both within and beyond the boundaries of the Intelligence Community. Congress and the Administration should ensure that this fusion center has all the authority and the resources needed to: Have full and timely access to all counterterrorism-related intelligence information, including ''raw'' supporting data as needed; have the ability to participate fully in the existing requirements process for tasking the Intelligence Community to gather information on foreign individuals, entities and threats; integrate such information in order to identify and assess the nature and scope of terrorist threats to the United States in light of actual and potential vulnerabilities; implement and fully utilize data mining and other advanced analytical tools, consistent with applicable law; retain a permanent staff of experienced and highly skilled analysts, supplemented on a regular basis by personnel on ''joint tours'' from the various Intelligence Community agencies; institute a reporting mechanism that enables analysts at all the intelligence and law enforcement agencies to post lead information for use by analysts at other agencies without waiting for dissemination of a formal report; maintain excellence and creativity in staff analytic skills through regular use of analysis and language training programs; and establish and sustain effective channels for the exchange of counterterrorism-related information with federal agencies outside the Intelligence Community as well as with state and local authorities.

6. Given the FBI's history of repeated shortcomings within its current responsibility for domestic intelligence, and in the face of grave and immediate threats to our homeland, the FBI should strengthen and improve its domestic capability as fully and expeditiously as possible by immediately instituting measures to: Strengthen counterterrorism as a national FBI program by clearly designating national counterterrorism priorities and enforcing field office adherence to those priorities; establish and sustain independent career tracks within the FBI that recognize and provide incentives for demonstrated skills and performance of counterterrorism agents and analysts; significantly improve strategic analytical capabilities by assuring the qualification, training, and independence of analysts, coupled with sufficient access to necessary information and resources; establish a strong reports officer cadre at FBI Headquarters and field offices to facilitate timely dissemination of intelligence from agents to analysts within the FBI and other agencies within the Intelligence Community; implement training for agents in the effective use of analysts and analysis in their work; expand and sustain the recruitment of agents and analysts with the linguistic skills needed in counterterrorism efforts; increase substantially efforts to penetrate terrorist organizations operating in the United States through all available means of collection; improve the national security law training of FBI personnel; implement mechanisms to maximize the exchange of counterterrorism-related information between the FBI and other federal, state and local agencies; and finally solve the FBI's persistent and incapacitating information technology problems.

7. Congress and the Administration should carefully consider how best to structure and manage U.S. domestic intelligence responsibilities. Congress should review the scope of domestic intelligence authorities to determine their adequacy in pursuing counterterrorism at home and ensuring the protection of privacy and other rights guaranteed under the Constitution. This review should include, for example, such questions as whether the range of persons subject to searches and surveillances authorized under the Foreign Intelligence Surveillance Act (FISA) should be expanded.

Based on their oversight responsibilities, the Intelligence and Judiciary Committees of the Congress, as appropriate, should consider promptly, in consultation with the Administration, whether the FBI should continue to perform the domestic intelligence functions of the United States Government or whether legislation is necessary to remedy this problem, including the possibility of creating a new agency to perform those functions.

Congress should require that the new Director of National Intelligence, the Attorney General, and the Secretary of the Department of Homeland Security report to the President and the Congress on a date certain concerning: The FBI's progress since September 11, 2001 in implementing the reforms required to conduct an effective domestic intelligence program, including the measures recommended above; the experience of other democratic nations in organizing the conduct of domestic intelligence; the specific manner in which a new domestic intelligence service could be established in the United States, recognizing the need to enhance national security while fully protecting civil liberties; and their recommendations on how to best fulfill the nation's need for an effective domestic intelligence capability, including necessary legislation.

8. The Attorney General and the Director of the FBI should take action necessary to ensure that: The office of Intelligence Policy and Review and other Department of Justice components provide in-depth training to the FBI and other members of the Intelligence Community regarding the use of the Foreign Intelligence Surveillance Act (FISA) to address terrorist threats to the United States; the FBI disseminates results of searches and surveillances authorized under FISA to appropriate personnel within the FBI and the Intelligence Community on a timely basis so they may be used for analysis and operations that address terrorist threats to the United States; and the FBI develops and implements a plan to use authorities provided by FISA to assess the threat of international terrorist groups within the United States fully, including the extent to which such groups are funded or otherwise supported by foreign governments.

9. The House and Senate Intelligence and Judiciary Committees should continue to examine the Foreign Intelligence Surveillance Act and its implementation thoroughly, particularly with respect to changes made as a result of the USA PATRIOT Act and the subsequent decision of the United States Foreign Intelligence Court of Review, to determine whether its provisions adequately address present and emerging terrorist threats to the United States. Legislation should be proposed by those Committees to remedy any deficiencies identified as a result of that review.

10. The Director of the National Security Agency should present to the Director of National Intelligence and the Secretary of Defense by June 30, 2003, and report to the

House and Senate Intelligence Committees, a detailed plan that: Describes solutions for the technological challenges for signals intelligence; requires a review, on a quarterly basis, of the goals, products to be delivered, funding levels and schedules for every technology development program; ensures strict accounting for program expenditures; within their jurisdiction as established by current law, makes NSA a full collaborating partner with the Central Intelligence Agency and the Federal Bureau of Investigation in the war on terrorism, including fully integrating the collection and analytic capabilities of NSA, CIA, and the FBI; and makes recommendations for legislation needed to facilitate these goals.

In evaluating the plan, the Committees should also consider issues pertaining to whether civilians should be appointed to the position of Director of the National Security Agency and whether the term of service for the position should be longer than it has been in the recent past.

11. Recognizing that the Intelligence Community's employees remain its greatest resource, the Director of National Intelligence should require that measures be implemented to greatly enhance the recruitment and development of a workforce with the intelligence skills and expertise needed for success in counterterrorist efforts, including: The agencies of the Intelligence Community should act promptly to expand and improve counterterrorism training programs within the Community, insuring coverage of such critical areas as information sharing among law enforcement and intelligence personnel; language capabilities; the use of the Foreign Intelligence Surveillance Act; and watchlisting; the Intelligence Community should build on the provisions of the Intelligence Authorization Act for Fiscal Year 2003 regarding the development of language capabilities, including the Act's requirement for a report on the feasibility of establishing a Civilian Linguist Reserve Corps, and implement expeditiously measures to identify and recruit linguists outside the Community whose abilities are relevant to the needs of counterterrorism; the existing Intelligence Community Reserve Corps should be expanded to ensure the use of relevant personnel and expertise from outside the Community as special needs arise; Congress should consider enacting legislation, modeled on the Goldwater-Nichols Act of 1986, to instill the concept of ''jointness'' throughout the Intelligence Community. By emphasizing such things as joint education, a joint career specialty, increased authority for regional commanders, and joint exercises, that Act greatly enhanced the joint warfighting capabilities of the individual military services. Legislation to instill similar concepts throughout the Intelligence Community could help improve management of Community resources and priorities and insure a far more effective ''team'' effort by all the intelligence agencies. The Director of National Intelligence should require more extensive use of ''joint tours'' for intelligence and appropriate law enforcement personnel to broaden their experience and help bridge existing organizational and cultural divides through service in other agencies. These joint tours should include not only service at Intelligence Community agencies, but also service in those agencies that are users or consumers of intelligence products. Serious incentives for joint service should be established throughout the Intelligence Community and personnel should be rewarded for joint service with career advancement credit at individual agencies. The Director of National Intelligence should also require Intelligence Community agencies to participate in joint exercises; Congress should expand and improve existing educational grant programs focused on intelligence-related fields, similar to military scholarship programs and others that provide financial assistance in return for a commitment to serve in the Intelligence Community; and the Intelligence Community should enhance recruitment of a more ethnically and culturally diverse workforce and devise a strategy to capitalize upon the unique cultural and linguistic capabilities of first-generation Americans, a strategy designed to utilize their skills to the greatest practical effect while recognizing the potential counterintelligence challenges such hiring decisions might pose.

12. Steps should be taken to increase and ensure the greatest return on this nation's substantial investment in intelligence, including: The President should submit budget recommendations, and Congress should enact budget authority, for sustained, long-term investment in counterterrorism capabilities that avoid dependence on repeated stop-gap supplemental appropriations; in making such budget recommendations, the President should provide for the consideration of a separate classified Intelligence Community budget; long-term counterterrorism investment should be accompanied by sufficient flexibility, subject to congressional oversight, to enable the Intelligence Community to rapidly respond to altered or unanticipated needs; the Director of National Intelligence should insure that Intelligence Community budgeting practices and procedures are revised to better identify the levels and nature of counterterrorism funding within the Community; counterterrorism funding should be allocated in accordance with the program requirements of the national counterterrorism strategy; and due consideration should be given to directing an outside agency or entity to conduct a thorough and rigorous cost-benefit analysis of the resources spent on intelligence.

13. The State Department, in consultation with the Department of Justice, should review and report to the President and the Congress by June 30, 2003 on the extent to which revisions in bilateral and multilateral agreements, including extradition and mutual assistance treaties, would strengthen U.S. counterterrorism efforts. The review should address the degree to which current categories of extraditable offenses should be expanded to cover offenses, such as visa and immigration fraud, which may be particularly useful against terrorists and those who support them.

14. Recognizing the importance of intelligence in this nation's struggle against terrorism, Congress should maintain vigorous, informed, and constructive oversight of the Intelligence Community. To best achieve that goal, the National Commission on Terrorist Attacks Upon the United States should study and make recommendations concerning how Congress may improve its oversight of the Intelligence Community, including consideration of such areas as: Changes in the budgetary process; changes in the rules regarding membership on the oversight committees; whether oversight responsibility should be vested in a joint House-Senate Committee or, as currently exists, in separate Committees in each house; the extent to which classification decisions impair congressional oversight; and how Congressional oversight can best contribute to the continuing need of the Intelligence Community to evolve and adapt to changes in the subject matter of intelligence and the needs of policy makers.

15. The President should review and consider amendments to the Executive Orders, policies and procedures that govern the national security classification of intelligence information, in an effort to expand access to relevant information for federal agencies outside the Intelligence Community, for state and local authorities, which are critical to the fight against terrorism, and for the American public. In addition, the President and the heads of federal agencies should ensure that the policies and procedures to protect against the unauthorized disclosure of classified intelligence information are well understood, fully implemented and vigorously enforced.

Congress should also review the statutes, policies and procedures that govern the national security classification of intelligence information and its protection from unauthorized disclosure. Among other matters, Congress should consider the degree to which excessive classification has been used in the past and the extent to which the emerging threat environment has greatly increased the need for real-time sharing of sensitive information. The Director of National Intelligence, in consultation with the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, and the Attorney General, should review and report to the House and Senate Intelligence Committees on proposals for a new and more realistic approach to the processes and structures that have governed the designation of sensitive and classified information. The report should include proposals to protect against the use of the classification process as a shield to protect agency self-interest.

16. Assured standards of accountability are critical to developing the personal responsibility, urgency, and diligence which our counterterrorism responsibility requires. Given the absence of any substantial efforts within the Intelligence Community to impose accountability in relation to the events of September 11, 2001, the Director of Central Intelligence and the heads of Intelligence Community agencies should require that measures designed to ensure accountability are implemented throughout the Community. To underscore the need for accountability: The Director of Central Intelligence should report to the House and Senate Intelligence Committees no later than June 30, 2003 as to the steps taken to implement a system of accountability throughout the Intelligence Community, to include processes for identifying poor performance and affixing responsibility for it, and for recognizing and rewarding excellence in performance; as part of the confirmation process for Intelligence Community officials, Congress should require from those officials an affirmative commitment to the implementation and use of strong accountability mechanisms throughout the Intelligence Community; and the Inspectors General at the Central Intelligence Agency, the Department of Defense, the Department of Justice, and the Department of State should review the factual findings and the record of this Inquiry and conduct investigations and reviews as necessary to determine whether and to what extent personnel at all levels should be held accountable for any omission, commission, or failure to meet professional standards in regard to the identification, prevention, or disruption of terrorist attacks, including the events of September 11, 2001. These reviews should also address those individuals who performed in a stellar or exceptional manner, and the degree to which the quality of their performance was rewarded or otherwise impacted their careers. Based on those investigations and reviews, agency heads should take appropriate disciplinary and other action and the President and the House and Senate Intelligence Committees should be advised of such action.

17. The Administration should review and report to the House and Senate Intelligence Committees by June 30, 2003 regarding what

progress has been made in reducing the inappropriate and obsolete barriers among intelligence and law enforcement agencies engaged in counterterrorism, what remains to be done to reduce those barriers, and what legislative actions may be advisable in that regard. In particular, this report should address what steps are being taken to insure that perceptions within the Intelligence Community about the scope and limits of current law and policy with respect to restrictions on collection and information sharing are, in fact, accurate and well-founded.

18. Congress and the Administration should ensure the full development of a national watchlist center that will be responsible for coordinating and integrating all terrorist-related watchlist systems; promoting awareness and use of the center by all relevant government agencies and elements of the private sector; and ensuring a consistent and comprehensive flow of terrorist names into the center from all relevant points of collection.

19. The Intelligence Community, and particularly the FBI and the CIA, should aggressively address the possibility that foreign governments are providing support to or are involved in terrorist activity targeting the United States and U.S. interests. State-sponsored terrorism substantially increases the likelihood of successful and more lethal attacks within the United States. This issue must be addressed from a national standpoint and should not be limited in focus by the geographical and factual boundaries of individual cases. The FBI and CIA should aggressively and thoroughly pursue related matters developed through this Joint Inquiry that have been referred to them for further investigation by these Committees.

The Intelligence Community should fully inform the House and Senate Intelligence Committees of significant developments in these efforts, through regular reports and additional communications as necessary, and the Committees should, in turn, exercise vigorous and continuing oversight of the Community's work in this critically important area.

The PRESIDING OFFICER. Who yields time? The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, if I could have the attention of the Senator from Florida, I thank him for his presentation. Essentially, I think what the Senator suggested was the Intelligence Committee, which is the appropriate committee of jurisdiction, have hearings and take a look at the recommendations he just outlined as a result of the investigation by the House and Senate on the 9/11 tragedy. As I have indicated to the Senator before—and he has written me a letter—both Senator ROCKEFELLER and I think that is most appropriate, and we intend to hold hearings just as soon as we can get our current inquiry on the prewar intelligence in Iraq out in a situation where we can present it to the public. I think the Senator has provided a valuable service.

One of the important aspects when discussing intelligence is not only to find out the accuracy and timeliness of the prewar intelligence but also to really get into the recommendations on how we fix things. The Senator has done us a good service. We will have hearings on these recommendations.

Mr. GRAHAM. Mr. President, I thank the Senator for his comments. I particularly appreciate his sense of urgency to move forward on these issues and present to the Senate and the American people a set of reforms that will give them greater security.

ACTIVITIES OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE—IRAQ

Mr. ROBERTS. Mr. President, I rise today in order to update my colleagues in this body on the recent activities of the Senate Select Committee on Intelligence with respect to Iraq. This is a subject that has been in the headlines consistently for many different reasons. But my purpose in rising today is to report to the Senate, for it is an important day in that the Intelligence Committee members, as of this afternoon, will be presented the working draft of what the staff has been working on for better than 7 months.

In June of last year, nearly 8 months ago, the Intelligence Committee began a formal review of U.S. intelligence into the existence of Iraq's weapons of mass destruction programs, Iraq's ties to terrorist groups, Saddam Hussein's threat to regional stability and security in the Persian Gulf, and his violation—obvious violation—of human rights.

This review was initiated as part of the committee's continuing oversight of the U.S. intelligence community's activities and programs, which is always continuing. Our committee staff had, for the previous several months, already been examining the intelligence activities regarding Iraq, including the intelligence community's support to the United Nations weapons inspections in Iraq and the community's analysis and collection of reporting related to the alleged Niger-Iraq uranium deal.

On June 20, 2003, however, Vice Chairman ROCKEFELLER and I issued a press statement. We announced a joint commitment to continue the committee's thorough review of prewar U.S. intelligence. In that press statement, Senator ROCKEFELLER and I agreed to examine the following: the quantity and quality of U.S. intelligence on the Iraqi regime's weapons of mass destruction programs, its ties to terrorist groups, the regime's threat to stability and security in the region, and its repression of its own people.

We also agreed to look at the objectivity and the reasonableness, independence, and accuracy of the judgments reached by the Intelligence Community; whether those judgments were properly disseminated to policymakers in the executive branch and the Congress; whether—and this is very important—any influence was brought to bear on anyone to shape their analysis to support policy objectives; finally, other issues we might mutually identify in the course of the committee's review.

I laid out three phases of the committee's overall Iraq review. First, to evaluate the quantity and quality of the intelligence underlying prewar assessments concerning Iraq; second, to determine whether the analytical judgments contained in those assessments were objective, independent, and reasonable; third, to evaluate the accuracy of those assessments by comparing them with the results of the ongoing investigative efforts in Iraq.

This afternoon, as I have stated, our committee members will begin reading and reviewing the staff's draft report, which does contain the committee's efforts to complete the first and second phases of the review. The third and final phase will be completed when the Iraq survey group completes its work in Iraq.

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

Mr. ROBERTS. I am delighted to yield.

Mr. WARNER. Mr. President, I am privileged to serve on the committee with the Senator. There has been criticism, raising the inference that we have not in the Senate been addressing this with the depth and sincerity and interest we should.

I take great umbrage at that. Under the leadership of the chairman and, indeed, myself, we are the ones who brought David Kay up. We are the ones who put David Kay on the stand, the Intelligence Committee first, and before the Armed Services Committee immediately following, and subjected him to cross-examination after the delivery of his report. His report is a mixed one in certain ways, in my judgment, but nevertheless in no way were we not taking the initiative to bring this to the forefront.

I say also, yesterday the Armed Services Committee heard from the Secretary of Defense. The distinguished chairman was present. He is a member of that committee. Again, the first questions on WMD and precisely the question of whether or not there was any manipulation or distortion came from the Chair, myself, addressed directly to the Secretary.

Any objective analysis of the reports out of that hearing this morning—it was covered by the press—he faced it head on and answered those questions.

As we are speaking, I just departed the television where Director Tenet is now addressing the Nation. So I think the President and his principal deputies are facing square on these complex issues, as is the Senate.

I commend the chairman, and perhaps he will agree with my observations.

Mr. ROBERTS. Mr. President, I fully agree with the distinguished chairman of the Armed Services Committee, and I am very proud to serve on that committee, as well as privileged being the chairman of the Intelligence Committee.

We discussed this at great length. All members of these committees discussed it at great length. We have a responsibility to the American people to

fully investigate this and to publicly, when we can, when we are not dealing with any classified information, tell the American people what they should know and have a right to know. We are proceeding in that fashion. We are taking this very seriously, which is why I am trying to summarize now for the Senate and for all those who may be interested in this issue precisely what we have done to date in regard to the Intelligence Committee.

The Senator is exactly right, he has taken the lead in the Armed Services Committee with the appropriate people within the military, and I thank him for his contribution.

Mr. WARNER. Mr. President, I thank the Senator.

Mr. ROBERTS. Mr. President, our review in the Intelligence Committee began in earnest in early June of last year when the intelligence community did provide our committee with 19 volumes—19 volumes, floor to ceiling—and they contained approximately 15,000 pages of intelligence assessments and sources and source reporting underlying the assessments of the Hussein regime's WMD programs. They also pertained to ties to terrorist groups, the threat to stability and security in the region, as I have said before, and the repression of his own people.

Our committee staff began immediately to read and analyze every report provided to determine how intelligence analysts reached their conclusions and whether any assessments were not supported by the intelligence provided to the committee.

Our committee staff endeavored to the greatest extent possible to disregard—to disregard—postwar revelations concerning Iraq in order to replicate the same analytical environment enjoyed by the intelligence community analysts prior to the war.

In late August and early September of 2003, our committee staff did request additional intelligence to substantiate the intelligence community's assessments which staff judged were not sufficiently supported by the intelligence that had been previously provided. Not only did we ask for the original information, but when we were not satisfied, we asked for more; we demanded more.

Our committee staff began to receive this additional supporting intelligence in October of 2003. In late October, the staff requested any intelligence which had not already been provided that contradicted the intelligence community's prewar analysis in regard to Iraq.

For example, the committee staff requested intelligence that showed Iraq had not reconstituted its nuclear program, had not renewed the production of chemical agents, and had abandoned an offensive biological weapons program. In early November of 2003, the intelligence community wrote to the committee that it was working to provide the contradictory intelligence we requested.

In the same letter, the community stated it had uncovered an additional six volumes of intelligence material that supported its assessments on Iraq's WMD programs, and the community did provide the contradictory intelligence information in late November.

I want my colleagues to realize that this has been an extremely thorough undertaking. During the 8 months of the committee's review, our committee staff submitted almost 100 requests for supplemental intelligence information, received over 30,000 pages of documents in response to those requests, and reviewed and analyzed each document that was provided.

Additionally, our committee staff have interviewed more than 200 individuals, including intelligence analysts, senior officials within the Central Intelligence Agency, Defense Intelligence Agency, Department of Defense, Department of Energy, Department of State, National Ground Intelligence Center, the Air Force, and the Federal Bureau of Investigation.

They have also questioned former intelligence analysts, national intelligence officers, operations officers, collection managers, signals intelligence collectors, imagery analysts, nuclear experts with the International Atomic Energy Agency, ambassadors, former United Nations inspectors, Department of Defense weapons experts, State Department officials, and staff members of the National Security Council.

Additionally, the committee has held three hearings on aspects of United States intelligence on Iraq, a hearing on the Iraq-Niger connection, a briefing by the CIA and State Department inspectors general on their review of the Iraq-Niger issue, and a hearing on the history and the continuity of weapons of mass destruction assessments that pertain to Iraq.

These efforts have enabled our committee staff to develop a full understanding of the quantity and quality of intelligence reporting supporting the intelligence community's prewar assessments.

Our committee staff have also gained an understanding of how intelligence analysts throughout the community used that intelligence to develop their assessments on these issues and how those assessments were actually disseminated to policymakers, and whether those assessments were reasonable, objective, independent, or if there was any political consideration and, again, whether any influence was brought to bear to shape their analysis to support any policy objective.

The professional bipartisan staff of the Intelligence Committee I think has done an outstanding job. It is a very complete job. For the next 3 weeks, however, it will be the members of the committee, our turn to do our work by reading and reviewing and suggesting any changes to the report.

I only hope that members will not prejudge the report. Let me repeat that. I only hope that members will not prejudge the report—there has been activity in the past indicating plans to do just that; I hope that does not happen—and that they will take the time to actually read the information in order to make informed critiques of the material.

This report can have a profound impact—it will have a profound impact—on the future of our intelligence community as we face the threats of a new century. However, this can only be done if colleagues on both sides of the aisle put aside election year politics and review the facts in an objective and unbiased manner.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Kansas has 9 minutes remaining.

Mr. ROBERTS. Mr. President, I wish to read a statement by Winston Churchill which I think has application to the inquiry we are conducting in the Intelligence Committee and the whole issue in regard to the credibility and the timeliness of intelligence prior to the war in Iraq. Sir Winston Churchill said this upon hearing about the attack on Pearl Harbor:

> Silly people, that was the description many gave in discounting the force of the United States. Some said they were soft, others that they would never be united—

Let me repeat that.

> That they would never be united, that they would never come to grips. They would never stand bloodletting. Their system of government and democracy would paralyze their war effort.

Let me repeat that.

> Their system of government and democracy would paralyze their war effort.
>
> Now we will see the weakness of this numerous but remote, wealthy and talkative people.

Referring to Americans.

> But, I have studied the American Civil War fought out to the last desperate inch. American blood flowed in my veins. I thought of a remark made to me 30 years before: The United States is like a gigantic boiler. Once the fire is lighted under it, there is no limit to the power it can generate. It is a matter of resolve.

I am concerned in what appears to be almost a blast furnace of politics at a very early time, in an even-numbered year—and I understand that. I know politics is not bean bagged, and I know that my colleagues have very serious differences of opinion, as we will on the committee, but I hope what Sir Winston said: ''Some said they were soft, others that they would never be united . . . their system of government and democracy would paralyze their war effort,'' is not true in regard to the global war on terrorism. I have some concerns about that.

I indicated at the first, when I knew it was our responsibility and obligation, in working with the distinguished vice chairman of the Intelligence Committee, that we would do our job and that we would do it just as bipartisan as we possibly could, that it would be

thorough. It is my view that this draft report, and then what the Members will agree to, will be the most thorough review of the intelligence community in the last decade. I also said that we will make every effort to hold public hearings, because the American people have a right to know, and we will let any political chips fall any way they want to fall.

I yield the floor.

The PRESIDING OFFICER. Who yields time? Under the previous order, the majority leader controls the next 23½ minutes and the Senator from California then would control 23½ minutes. The Senator from Mississippi.

Mr. LOTT. Mr. President, with the Senator's agreement I will go ahead and proceed since we did have, I think, about 27 or so minutes.

Mr. ROBERTS. I yield the floor. May I inquire as to how much time I have remaining?

The PRESIDING OFFICER. The Senator from Kansas has 5 minutes remaining.

Mr. ROBERTS. I ask unanimous consent that that time be yielded to the distinguished Senator from Mississippi.

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

The Senator from Mississippi is recognized for 5 minutes.

KEEPING POLITICS OUT OF INTELLIGENCE COMMITTEE FUNCTION

Mr. LOTT. Mr. President, let me first commend and congratulate Senator ROBERTS, the chairman of our Select Committee on Intelligence, for the leadership he is giving on that very important committee. It is a very important and difficult assignment.

I thought his statement today was a very good one. I jokingly said, but I meant it sincerely, I could not quite tell when he went from quoting Churchill to speaking for himself because the eloquence was very close.

He makes a plea that is so important, and that is: Do not prejudge what the subcommittee is going to do. Members of the Intelligence Committee should not prejudge the information we are going to receive in the staff report. We should work together to see what we have and what conclusions we reach and what should be done. That is our job.

I acknowledge that this is another in a series of what has been described in many different ways but I just refer to it as ''oops'' hearings—oops, we missed something here. But it has been going on for years.

There was not a clear indication of what was happening in the Soviet Union, that they were imploding economically and they did not have the strength we thought they did in the defense area. We had Khobar Towers. We have had a series of events that our intelligence did not pick up. Once again, we find ourselves now, with the 9/11 Commission, working to see what we missed perhaps in our intelligence and law enforcement community before 9/11. It should not be approached, though, with the idea of condemning some particular individual but finding out what happened: Why did we not do a better job? What did we not know? And more importantly, what are we going to do about it?

I am tired of oops hearings that happen after the fact and nothing really changes. Are we going to make a real change this time? Can we do a better job with our intelligence, and our intelligence community? I think we can.

By the way, when we start pointing a finger of blame, we better look in the mirror first. We have had these intelligence committees since the 1970s. We have known that their budget has not been adequate through much of the 1990s. We have known that we lost our ability to have human intelligence, people on the ground. It became politically incorrect in the 1970s to have the head of, say, a financial institution in Buenos Aires to be headed by an American who was an agent, or a journalist who was working for a newspaper but was an agent. We have made it extremely difficult. We have become too caught up in sophistication, thinking we could get enough with satellites or with technology. It is not enough.

I think what we need to do is lower the rhetoric. I know this is a political year, an election year. Everything is going to be somewhat political on both sides, but can we spare one thing, just one thing, from the political agenda? Can we not separate out intelligence and how we support it? Can that not be bipartisan? Now there is a call for an independent commission. We have even dropped ''bipartisan.'' Now it is ''independent.''

Who decides that it is independent? Some people are indicating if the President calls for an independent commission, one to which he appoints good men and women, that is not independent, but if it is one established by the Congress where we name Republicans and Democrats; that is independent.

Quit the blame game. Ask legitimate questions. Work together. Draw conclusions and, more importantly, take action. Intelligence is so critical. In some respects it is even more critical than defense spending, because if we do not have good intelligence and if we do not have a reliable intelligence apparatus that works with our defense, our men and women are exposed to uncertainty, unknown difficulty, and death.

We are talking about the lives of young men and women. Is it good that we are condemning and revealing information about the quality of our intelligence community while our men and women are today in Iraq, Afghanistan, and all over the world, who are relying on the ability of our agents, the CIA, the DIA, the different organizations we have doing intelligence? Even doing that is dangerous, in my opinion.

We should do our work. I am not happy with the intelligence. I do not think the intelligence was what it should have been. It was inadequate, maybe even inaccurate. But why? There was large agreement not only within our community but also with agencies from around the world.

Has my time expired?

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator's time has expired.

Mr. LOTT. I believe the Senator from Kansas yielded to me some more of his time, if I could inquire about using an additional 2 minutes.

The PRESIDING OFFICER. Under the previous order, the majority leader or his designee has 24½ minutes.

Mr. LOTT. Madam President, I yield myself an additional 2 minutes of time that has been designated for the leader or Senator ROBERTS. I will be brief because I know Senator FEINSTEIN is waiting.

Mr. ROBERTS. Will the Senator yield?

Mr. LOTT. I would be glad to yield.

Mr. ROBERTS. I think the original order has it that the majority leader or his designee will be recognized for the next 24 minutes. In discussing this with Senator FEINSTEIN, I know she has waited patiently and she has 22 minutes reserved.

I ask unanimous consent that after the remarks of Senator LOTT Senator FEINSTEIN be recognized for her remarks and we would reserve the remainder of our time.

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

Mr. LOTT. Madam President, I conclude by talking about what we should do now. The Intelligence Committee should do its job. We should not jump to conclusions. Let's review the report. Let's do our homework. We pushed so much of it off on our staff, now it is time we do it ourselves. Let's read what is in there and then let's decide what recommendations we are going to make.

Why do we have these committees that are evenly divided? I have studied the history. I have been involved in how the Intelligence Committee works. We have carefully tried to make sure we put our best on that committee and that it is equally divided and that it is not partisan. The same thing in the House. Now it is time we lead and show some direction.

I hope we will take some action. I am for actually making some really aggressive rules. I am not sure our intelligence community is set up properly. I don't like the idea that we have 13 different agencies running around. Who is in charge, who coordinates and asks them and directs them? I think there are some problems there.

Then there are those saying we need an independent commission. The President said we should have one. Let's do everything we can to find out the facts and see the recommendations and take action and reassure ourselves and the American people. Now that is being condemned.

I think we should do our work in the Intelligence Committee. Let the President appoint this independent commission. Let's do this job in a responsible way and not rush to judgment.

There will be efforts today to say, well, the report is totally inadequate, before the Senators even read the report. I realize Senators don't like to have lengthy sessions of reading material to review these recommendations. But never before has it been more important that we do this right.

I think we should make changes. I personally think there need to be some personnel changes. That may not be my decision. But hopefully I can help get a result that will make sure we don't have another, ''Oh, my God, what didn't we know?'' hearing. This is too serious. I urge my colleagues on both sides of the aisle, let's do our job, let's do it in a nonpartisan way, and let's try to keep politics, as much as we can, at least out of Intelligence.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

INDEPENDENT COMMISSION ON INTELLIGENCE

Mrs. FEINSTEIN. Madam President, I thank the chairman of the Intelligence Committee for his remarks. I think he well and ably set out the structure of what we are doing.

I also thank Senator LOTT for his remarks, particularly the remarks that said we should work together. That has been one of the problems. I want to go into that.

But before I do, I would like particularly to thank the Senator from Florida, the former chairman of the Senate Select Committee on Intelligence, for his three speeches. I had the privilege of previewing these. I think he delivered them eloquently and forcefully. I want him to know I very much appreciate his careful scholarship and his reasoned approach, which mark not only his remarks here but also his tenure as chairman of the Intelligence Committee. He has presided over what continues to be one of the most difficult chapters in the history of our intelligence community.

Senator LOTT has just said, with considerable spark, that we should work together. I could not agree more.

Second, the committee has been prevented from examining the use of intelligence by policymakers. This I believe is a real problem. Our own resolution sets out that we should be able to examine the use of intelligence by policymakers and administration officials. To a great extent this is the reason we are here today creating an independent commission which will have more authority than the elected officials of this Government have.

I learned this morning that the independent commission that is functioning today has access to the President's daily intelligence briefs. The Intelligence Committee of the Senate does not have access to the President's daily intelligence briefs, nor have we had, to the best of my knowledge, through this investigation.

I was very pleased to see that over the past weekend the President has apparently reversed course, accepting the recommendations from Dr. Kay, from Members of the Senate, and from a host of experts to the effect that only a full and outside investigation will be able to be both credible and acceptable to the world at large.

I did not believe so before. I voted against the Corzine resolution when it came up before. I changed my mind because if we, the elected representatives, are not permitted to look into the use of intelligence as provided by S. Res. 400, and it has to be an outside committee that will have that right, so be it. But I find it to be really idiosyncratic, because I believe the full power should be vested in the officials of our Government, of which the Senate plays a very major role, not necessarily always an independent committee, as it appears to be happening.

Such a commission, though, will be able to remove some of the partisanship that has infected this issue and, I hope, provide a reasoned, careful, and credible assessment. I am concerned that the President has let it be known he intends to appoint all of the members of the commission and carry this out through Executive Order. This I believe will adversely affect the commission's independence.

Let me give you an example. Many believe the handling of the National Commission on Terrorist Attacks on the United States—that is a Commission now functioning—headed by Gov. Thomas Keane and Congressman Lee Hamilton, is a case in point. There have been many reports that chronic delays in providing documents and foot dragging in arranging interviews have frustrated the efforts of this Commission to complete its work within the timeline the White House insisted upon.

The Commission is asking for an extension of time and Senators MCCAIN and LIEBERMAN have introduced legislation to do so. I understand the President yesterday agreed to extend this timetable to July 26 of this year. I strongly believe the Commission should be given whatever time it needs to complete its examination and we, in fact, should pass the McCain-Lieberman bill.

Nevertheless, it is my hope that a commission, whether it is created by Executive order or by statute, will be able to answer four questions.

The first is: Were the prewar intelligence assessments of the dangers posed by Saddam Hussein's regime wrong? This is not as simple a question as it seems, for in the months prior to the invasion of Iraq these assessments had two separate, equally important parts. The first is whether Iraq had the capability to place the United States in such danger as to warrant the unprecedented step of a unilateral preemptive invasion of another sovereign nation. Just two days ago Secretary Powell, asked if he would have recommended an invasion knowing Iraq had no prohibited weapons, replied: ''I don't know because it was the stockpile that presented the final little piece that made it more of a real and present danger and threat to the region and to the world.'' He added: ''The absence of a stockpile changes the political calculus; it changes the answer you get.''

Second, was such a threat imminent or was it grave and growing? Critical to this debate during the Summer and Fall of 2002 was the immediacy of the threat which supported the argument that we needed to attack quickly, could not wait to bring traditional allies aboard or to try other options short of invasion.

The second question is: Whether the intelligence assessments were bad as well as wrong.

This requires a fine distinction between an intelligence assessment that is wrong, and one that is bad. Intelligence assessments are often wrong, for by their nature they are an assessment of the probability that a future event will take place. But wrong does not always mean bad. Sometimes an intelligence assessment follows the right logic and fairly assesses the amount, credibility and meaning of collected data, and still is wrong. What the independent commission needs to do is to separate these two different, but related, issues.

The third question is to determine—if the intelligence assessment was both bad and wrong—to what degree and why?

Did the intelligence community negligently depart from accepted standards of professional competence in performing its collection and analytic tasks?

Was the intelligence community subject to pressures, personal or structural, which caused it to reach a wrong result through bad analysis?

Were the ordinary internal procedures by which intelligence is subject to peer review properly carried out?

A commission must delve deeply into the mechanisms of intelligence analysis to reach these answers.

The fourth and final question is whether the intelligence assessments reached by the intelligence community, whether right or wrong, good or bad, were fairly represented to the Congress and to the American people. Did administration officials speaking in open and closed session to members of Congress accurately represent the intelligence product that they were relying upon? Were public statements, speeches and press releases, fair and accurate? This is the cauldron boiling below the surface.

This final question is particularly grave, because it touches upon the constitutionally critical link between the executive and legislative branches. The Founders knew what they were doing

when they developed a shared responsibility for war making—only Congress can declare war, with the President, as Commander in Chief, conducting it—and the need is vital for Members of Congress to have fairly presented, timely and accurate intelligence when they consider whether to invest the President with the authority as Commander in Chief to put American lives, as well as those of innocent civilians, at risk.

My vote, in particular, was based largely on intelligence, and statements about that intelligence, related to Saddam's certain possession of chemical and biological weapons and the probability or likelihood, that he had both weaponized and deployed them. Also, the fact that he had violated the U.N. missile restrictions and possessed a delivery system for a chemical or biological warhead, and could deliver that warhead 600 miles, threatening other Middle Eastern nations or perhaps, from offshore, the United States.

There were many statements made by the administration that when combined with the intelligence created an overwhelming case, I think particularly for me and for many others. I don't think there would have been 77 votes in the Senate to authorize use of force had these statements not been made.

Let me give just five examples of such statements:

Secretary of State Powell, on September 8, 2002, said on Fox News Sunday: ''There is no doubt that he has chemical weapons stocks.'' He also said: ''With respect to biological weapons, we are confident that he has some stocks of those weapons, and he is probably continuing to try to develop more.''

President Bush, on September 12, 2002, said in his address to the U.N. General Assembly: ''Right now, Iraq is expanding and improving facilities that were used for the production of biological weapons.''

President Bush, in his October 7, 2002, address also said: ''We know that the regime has produced thousands of tons of chemical agents, including mustard gas, sarin nerve gas, and VX nerve gas.''

Secretary Powell, again in his February 5, 2003, address to the U.N. Security Council, said:

> Our conservative estimate is that Iraq today has a stockpile of between 100 and 500 tons of chemical weapons agent. That is enough agent to fill 16,000 battlefield rockets. Even the low end of 100 tons of agent would enable Saddam Hussein to cause mass casualties across more than 100 square miles of territory, an area nearly 5 times the size of Manhattan . . . when will we see the rest of the submerged iceberg? Saddam Hussein has chemical weapons. Saddam Hussein has used such weapons. And Saddam Hussein has no compunction about using them again, against his neighbors and against his own people.

What a strong statement—a statement that has to be backed up with almost certain facts.

President Bush said, on October 2, 2002, in Cincinnati: ''Facing clear evidence of peril, we cannot wait for the final proof, the smoking gun that may come in the form of a mushroom cloud.''

I remember hearing this speech, which made a deep impression upon me.

The President of the United States said this. Members of the Intelligence Committee are looking at intelligence. When combined with the President's statements, the statements of the Secretary of State and the statements of the Vice President, how can you not believe them? That is why this committee's investigation into the use of intelligence which we have been prohibited from entering into is so important that we do. We are the official people's representatives on this Committee on Intelligence, and to cut us out from one part of an investigation that our own resolutions say we should look at, I think, is unconscionable.

When all of this is combined with the intelligence provided to Congress, the aerial photographs of what was believed to be chemical weapons plants, and the National Intelligence Estimate of October 2002, this information created an overwhelming belief that there was an imminent threat to our Nation, and a dominant majority of the Senate of the United States voted for the resolution authorizing the use of force.

You can imagine my surprise that after more than 1,500 sites—top priority sites—have been searched and millions of dollars spent on Dr. Kay's special investigation, no weapons have been found. And Dr. Kay submits to us that he does not believe any will be found.

So the reality of what has been learned in Iraq versus the intelligence presented to us causes enormous concern.

Again, I truly believe that had it not been for the strength of the intelligence and statements made to Congress, including the Senate Select Committee on Intelligence, a vote for regime change alone, without the belief of an imminent threat, would not have had the majority it did, may well not have passed, and if it did, most likely would have passed with a bare majority.

These statements and the intelligence upon which they were based now appear to be unsupported by the available evidence, and have been contradicted by Dr. Kay's findings. A commission must look closely at these and other similar statements.

Even as the commission moves forward, I believe Congress should undertake two related tasks. The first is to carefully review the implications of the President's so-called preemption doctrine. I have strongly criticized this policy since its inception. Although, clearly, the United States will always retain the right to defend itself in specific circumstances from a real, imminent threat, preemption as a doctrine departs from core American values. We must be strong in defense but not allow this country to become an aggressive nation of conquest.

I also believe the doctrine runs counter to 50 years of bipartisan American foreign policy, which is based on the belief that international law, multilateral agreements, and diplomacy are also effective means to promote and to protect American security.

Finally, and on a more fundamental and practical level, the doctrine requires a faith in the perfectibility of intelligence analysis that is simply not attainable. Preemption inherently requires us to be right every time on the nature and imminence of threats.

Unfortunately, as every senior intelligence official to whom I have spoken tells me, intelligence is rarely going to be that accurate, for the very reason I have mentioned earlier it is, at its heart, probability analysis.

This past weekend, Dr. Kay spoke to this issue, saying, and I quote, ''if you cannot rely on good, accurate intelligence that is credible to the American people and to others abroad, you certainly can't have a policy of preemption.''

The preemptive concept bets everything on one roll of the dice and we had better be right every time.

I spoke about this when the doctrine was announced and offered the hypothetical of a preemptive attack based on intelligence that was wrong, that results in destruction and death, and undermines American credibility and our position around the world. The hypothetical, so far, at least, is true in Iraq.

I hope the President and his advisers will reconsider the ill-advised adoption of preemption in light of what we have already learned from its first exercise.

The second thing the Congress should do, and do now, is begin the process of restructuring the intelligence community and begin by taking a single, critical step: Pass legislation creating a Director of National Intelligence and change from the current situation where a single man is both head of the entire intelligence community—with its 15 departments and agencies—and the head of the Central Intelligence Agency. It is an impossible job with insufficient authority.

I have introduced legislation that would accomplish this in both the 107th and 108th Congresses. Each time I stood on this floor to urge its passage and each time I expressed my belief that the current structure could result in a colossal intelligence failure.

In June of 2002, I said: ''This legislation creates the Director of National Intelligence to lead a true intelligence community and to coordinate our intelligence and anti-terrorism efforts and help assure the sort of communication problems that prevented the various elements of our intelligence community from working together effectively before September 11 never happen again.''

I fear it has happened again. Once more, I stand in the Senate to urge the passage of the legislation.

It has to be pointed out that our present intelligence structure for the most part is based on a post-World War II, cold-war environment. It is not suited for the new challenges of asymmetric threats and non-state entities, as well as quite possibly from states also involved in terrorism. We have a Soviet-era intelligence community in a post-Soviet world.

We need to have a Director of National Intelligence now more than ever and we should not wait any longer for the results of another commission. I remind my colleagues that creating a Director of National Intelligence was the very first recommendation of the bipartisan Joint Inquiry into the Attacks on September 11, a recommendation contained in a report signed by every member of the Intelligence Committees of the Senate and the House. Senator GRAHAM spoke earlier about this provision, and I agree with his explanation of the pressing need for the change.

Such a position, if created today, would provide substantial improvement in the function and quite possibly the restructuring of the more than one dozen agencies and departments. It would give one person, appointed by the President for a 10-year term, the statutory authority to determine strategies across the board, to set priorities, and to assign staff and dollars across departments and agencies.

It is my understanding the Senate Select Committee on Intelligence will take up this legislation in 2004, I am told, in April. It is my hope that working together we can include this legislation as part of the Intelligence Authorization Act for fiscal year 2005 and make it law this Spring.

As I have said earlier, the so-called ''bipartisan'' investigation by the Senate Select Committee on Intelligence has had little effective participation by Democratic Senators, or their staffs. In fact, in many ways had the Intelligence Committee been able to carry out its responsibilities, as set for in Senate Resolution 400, much of the debate on the floor on this issue would be unnecessary. Nonetheless, I look forward to this afternoon when the report will be made available to committee members.

I deeply believe that the Senate Select Committee on Intelligence should turn its attention to its core responsibilities—conducting vigorous oversight of the intelligence community, and carefully considering legislation to make necessary changes. To that end I urge Chairman ROBERTS to take up legislation restructuring the Intelligence Community, including, but not limited to, my bill to create a Director of National Intelligence, hold comprehensive hearings on these proposals, and report out legislation in time for inclusion in this year's Intelligence Authorization bill.

As I have said earlier, my vote in favor of the resolution to authorize the use of force in Iraq was perhaps the most difficult, and consequential, vote of my career. It was a decision based on hours of intelligence briefings from administration and intelligence officials, plus the classified and unclassified versions of the National Intelligence Estimates. My decision was in part based on my trust that this intelligence was the best our Nation's intelligence services could offer, untainted by bias, and fairly presented. It was a decision made because I was convinced that the threat from Iraq was not only grave but imminent.

Because of my vote, and the votes of the 76 other Senators who voted for the resolution, our troops are stuck in Iraq, under fire, and taking casualties. Our armed forces are stretched thin; we have antagonized our enemies and alienated many of our closest allies.

In the post-9/11 world, a world where we confront asymmetric threats every day, intelligence plays a key role informing the policy-making process. The administration bears primary responsibility for our intelligence apparatus—ensuring that it works well, is honest, and is properly focused. The administration is also responsible for honestly and fairly presenting the results of the intelligence process to the Congress, informing, for instance our vote on the resolution to authorize force.

I now fear that the threat was not imminent, that there were other policy options, short of war, that would have effectively met the threat posed by Saddam Hussein.

And that is why a full investigation of the prewar intelligence is so critical.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I would like to be notified when I have used 10 minutes.

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

U.S. INTELLIGENCE

Mrs. HUTCHISON. Madam President, we have heard a number of speakers in the Senate this week. It has been an important week. We have had the testimony of David Kay, the United Nations inspector who just came back from Iraq. We had the reaction to his testimony. We had reports from the Senate Select Committee on Intelligence. And today we are going to have a major speech by the Director of the Central Intelligence Agency, George Tenet.

It is very important that we put in perspective what is happening and the steps that should be taken to ensure we are addressing the problems correctly.

First, Mr. Kay, who is totally credible on the issue of weapons of mass destruction, made the following statements in his Armed Services Committee testimony.

Senator MCCAIN asked the question:

[Y]ou agree with the fundamental principle here that what we did was justified and enhanced the security of the United States and the world by removing Saddam Hussein from power?

Mr. Kay:

Absolutely.

Senator KENNEDY:

Many of us feel that the evidence so far leads only to one conclusion: That what has happened was more than a failure of intelligence, it was the result of manipulation of the intelligence to justify a decision to go to war . . .

Mr. Kay:

All I can say is if you read the total body of intelligence in the last 12 to 15 years that flowed on Iraq, I quite frankly think it would be hard to come to a conclusion other than Iraq was a gathering, serious threat to the world with regard to weapons of mass destruction.

He went on to say:

I think the world is far safer with the disappearance and removal of Saddam Hussein. I have said I actually think this may be one of those cases where it was even more dangerous than we thought. I think when we have the complete record you're going to discover that after 1998 it became a regime that was totally corrupt. Individuals were out for their own protection. And in a world where we know others are seeking weapons of mass destruction, the likelihood at some point in the future of a seller and a buyer meeting up would have made that a far more dangerous country than even we anticipated with what may turn out not to be a fully accurate estimate.

Senator MCCAIN:

Saddam Hussein developed and used weapons of mass destruction; true?

Mr. Kay:

Absolutely.

Senator MCCAIN:

He used them against the Iranians and the Kurds; just yes or no.

Mr. Kay:

Oh, yes.

Senator MCCAIN:

OK. And U.N. inspectors found enormous quantities of banned chemical and biological weapons in Iraq in the '90s.

Mr. Kay:

Yes, sir.

Senator MCCAIN:

We know that Saddam Hussein had once a very active nuclear program.

Mr. Kay:

Yes.

Senator MCCAIN:

And he realized and had ambitions to develop and use weapons of mass destruction.

Mr. Kay:

Clearly.

Senator MCCAIN:

So the point is, if he were in power today, there is no doubt that he would harbor ambitions for the development and use of weapons of mass destruction. Is there any doubt in your mind?

Mr. Kay:

There's absolutely no doubt. And I think I've said that, Senator.

So I think, when we look at the testimony of the man who has been on the ground, who has searched for the weapons of mass destruction, who knows what all the clues are, who knows what the body of intelligence was—and he

says it really could have been more dangerous than we even ever thought—I think we have to assess that in the context of all of the rhetoric we are hearing about second-guessing a decision that was based on what we had at the time.

Senator FEINSTEIN said we should relook at our intelligence-gathering organization. I do not think anyone would disagree with that, including the President of the United States.

In our first effort to address the issues of the failure that led to 9/11, we all tried to look at the intelligence failures, to look at the things that did not compute, to look at the communications systems that did not match up. We tried to put a grid in place in the agency that was created for homeland security that would allow all of the intelligence gathering that is done in and for our country to be put through a grid to warn us when there was an imminent danger.

Let's talk about what the result has been because we have tried to address those failures. We have prevented potential terrorist acts. We know we prevented an airliner from being blown up because a very smart flight attendant saw a man get ready to strike a match and light his shoe. We know from that experience what to look for in an airline passenger, and we have refined the system. We have seen flights canceled because there was a suspicion there might be something going on. Who knows what was prevented in that instance?

We have seen arrests in very remote parts of our country because of intelligence gathering. We have not had a terrorist attack on our country since the time we were attacked on 9/11. We have had attempts, but we, because we have processes in place from what we have learned, have thwarted those attempts, including one this week in the United States Senate.

So, yes, we need to relook at our intelligence gathering. Yes, we are learning every day. And, yes, the President of the United States has already said he will have an independent investigation of our intelligence gathering that led to the invasion of Iraq. He has said he would do that. The President has also agreed to the extension asked for by the 9/11 Commission, the bipartisan commission that is looking into what happened before and during the 9/11 incident. He has said, yes, I will agree to an extension, because he was asked. The President of the United States is being open. The President of the United States is trying to do the right thing to get to the bottom of this because he has the interests of the United States at heart.

Let's look at some other results. Let's look at the difference in the hope of the people of Iraq and Afghanistan today. Yes, there are continuing problems. Yes, it grieves every one of us. Our hearts stop when we hear there has been another bombing or mishap that has hurt one of our soldiers or killed one of our soldiers or an Iraqi citizen. Yes, it hurts.

But do the people of Iraq today have a better chance to live in freedom and prosperity than they had the entire time they had been ruled by a despot? Absolutely. Do the people of Afghanistan today have the hope for a future of freedom more than they had under the Taliban and the other despots under whom they have been buried for all these years? Oh, yes. They have a constitution that is getting ready now to become implemented that actually says women will be equal in that country.

We have come a long way.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mrs. HUTCHISON. Madam President, I ask the distinguished Senator from Oklahoma if he would like to extend the time or is he prepared to go to the highway bill.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, we are prepared to go back to the bill at this time.

Mrs. HUTCHISON. Thank you.

Madam President, let me end by saying I hope we will come together and support the President in his initiatives to get to the bottom of this issue. The President is looking out for the United States of America, and we do not need partisan rhetoric on an issue such as this. We need to come together. That is what we must do.

Thank you, Madam President. I yield the floor, and I yield back the time that was allocated for morning business.

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

The PRESIDING OFFICER. Under the previous order, the hour of 10:50 having arrived, the Senate will resume consideration of S. 1072, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1072) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Modified committee amendment in the nature of a substitute.

Dorgan amendment No. 2267, to exempt certain agricultural producers from certain hazardous materials transportation requirements.

Gregg amendment No. 2268 (to amendment No. 2267), to provide that certain public safety officials have the right to collective bargaining.

The PRESIDING OFFICER. The Senator from Nevada.

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

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

Mr. INHOFE. At this point, I will yield to the Senator from Iowa, and following his remarks I will seek to be recognized.

(Mr. ENSIGN assumed the Chair.)

Mr. GRASSLEY. Madam President, I want to address the consideration that the Senate Finance Committee gave to the portion of the highway bill that determines the size of the trust fund, source of the trust fund, and our committee's decisionmaking over that. And my speaking to the Senate is based on the proposition, thus far, that we are moving ahead with the total highway package the way that has been suggested by the Senate Environment and Public Works Committee, Senate Banking Committee, and the Senate Commerce Committee, with my committee working in cooperation with those three committees, at that level of expenditure.

Somehow, if the President, in succeeding days, would say he is not going to sign a bill that is that big, I will moderate my remarks to conform with that. But right now, all I know is what this body has done in three of its committees to arrive at where we are now. I want to address, within that framework and that environment, the work of our committee.

I will particularly speak about some other Members of this body who lack a consideration of the hard work that has been put into this product, as well as their philosophical objections to what we have done. I don't have any question that any Senator can have any philosophical objections to anything he wants, but I want everybody in the Senate to know that the 21 members of the Senate Finance Committee did not take this product lightly.

There has been a lot of harsh criticism of the upcoming Finance Committee title of this highway bill.

What I will do is lay out the context of the funding portions of this legislation and respond to this harsh criticism. The role of the Finance Committee on the highway bill is centered on the highway trust fund raising, not expending, funds. Finance Committee jurisdiction involves the Federal excise taxes, the highway trust fund, and the expenditure authority of the trust fund. The Finance Committee has acted in all of these areas as recently as just this Monday.

The authorizing committee's actions will result in outlays from the trust funds of $231 billion for highways, and $36.6 billion for transit, spread out over the next 6 years. Essentially, those figures I just gave you represent the cash-flow out of the trust fund. The Finance Committee's action provided the resources in the trust fund to cover the cash outflows and provide a cushion in the trust fund balances. This is how we arrived at that action of the Senate Finance Committee.

But some of the critics have said the Finance Committee should have funded

the trust fund at the level of the motor fuel taxes and the compliant savings resulting therefrom.

This is a very fair debate to have in the Senate, or in any committee, but I want the Members of this body who don't serve on the Finance Committee to understand that we had that fair debate in the Finance Committee on Monday, and in other sessions before that. This committee had to decide otherwise from those critics who have said that the Finance Committee should have funded the trust fund at just the levels of the motor fuel taxes and compliant savings.

So I think everybody in this body has a responsibility to be realistic and wake up to the facts of life as we are considering this legislation and in their responding to it because there will be a time when the Senate will express its will on this floor, and we all have to face the reality of the legislative process. The will of the Senate, at the end of the day, will be to fund highways and transit programs at the outlay levels provided by the three authorizing committees of Banking, Commerce, and Environment and Public Works.

So to my critics, some of whom chose to criticize me directly, let me remind them that last year I was 1 of 21 votes against the Bond-Reid amendment during the budget debate. That wasn't an easy vote. So I understand the sentiments for lower funding levels, but Members of this body need to understand that 21 is a sizable minority of this body, and the vast majority decided more money should be spent on highways and transit.

That was last year, and this is now, today. A majority of the Finance Committee dealt with this fundamental reality. So I would like to ask the critics to come out of their ivory towers and deal with the reality of the Senate.

The reality that faced us on the Finance Committee was how to bridge the gap between the baseline revenue collections and the outlay levels of the three authorizing committees, which was considerably higher.

In consideration of this major problem facing us, the leader of the Democrats on my committee, Senator BAUCUS, and I—and we try to work together whenever we can, and that is most of the time—had the reality of the Senate to take into consideration. We had to keep in mind the institutional issues with which the Senate Finance Committee has to deal. We could not and we would not choose an option that would undermine the integrity of the trust fund, and we surely are not going to do anything to undermine the role of the Senate Finance Committee.

What do I mean by the integrity of the trust fund? The answer is that the Finance Committee needs to ensure that there is a relationship between the receipts in the trust fund and the spending from that trust fund. To the extent that relationship is undermined, I say to my fellow colleagues, the Finance Committee's role is undermined as well.

I also wish to point out the bottom line for those other 20 Senators who, like me, voted against the higher trust fund spending last year. Again, the political reality is that the Senate is going to approve outlays at the levels approved by these three authorizing committees.

One option would be a direct general fund transfer. A direct general fund transfer erodes the integrity of trust funds, and it dilutes the role of the tax-writing committees. It directly delinks highway spending and highway receipts, and we believe those have traditionally been tied together and should be tied together. Because of that, the Senate did not go there.

There is a danger for us fiscal conservatives of such an approach because direct general fund transfers would potentially be open ended and no fiscal discipline whatsoever.

If the Finance Committee had done what the critics argue, what would have been the outcome on the floor of the Senate? Does anyone believe that we would have been left at the authorized funding amounts? No, we all know the funding levels would have gone way up. Where would we end up? The answer is that we would end up with a direct general fund transfer.

Any Finance Committee member should be concerned about that bottom line result and what that does to the trust fund concept and the history of our committee's jurisdiction over that trust fund but, more importantly, our responsibility we have to the Senate.

In the Finance Committee, we decided to maintain the relationship between the trust fund receipts and the trust fund spending. It is so important then to distinguish between trust fund receipts and revenues that is counted for budget purposes.

Embedded in the trust funds are several policies that burden the trust fund. The clearest of these, and one we always hear, is the treatment of ethanol. The tax benefit for ethanol is the only—the only—energy production incentive that is not borne by the general fund. There are billions of dollars in tax benefits for oil and gas that are charged to the general fund, for instance. Do Senators from oil and gas States understand that the tax benefit for ethanol is the only energy production incentive that is not borne directly by the general fund?

Under current law, the use of ethanol is prejudiced in terms of the highway trust fund resources. That is because the benefit is charged against the trust fund up to this point when we adopt this legislation because my VEETC proposal eliminated the inequity by making sure the trust fund is fully funded by those who use ethanol fuel. For my friends who are always criticizing, the tax benefit for ethanol, like that of any other energy source, will be borne then by the general fund.

There are numerous other exemptions from the fuel taxes in addition to ethanol. These exemptions further important policy purposes but purposes which are not embedded in highway policy. No one takes issue with the exemption but whether they should be borne by the highway trust fund. We don't hear that argument.

Contrary to what has been suggested, increasing highway funding in this manner is not unlimited like the direct general fund transfers but is limited by the universe of exemptions.

For the 20 other Senators who, like me, last year voted for lower highway spending, they have an interest in what the Finance Committee did. By maintaining the relationship between highway receipts and spending, we maintain a ceiling on the spending. A direct general fund transfer does not have such a limit.

I repeat and remind my colleagues, the bottom line is that the so-called illusory receipts that Finance came up with result in a ceiling on highway and transit spending. Don't these other 20 Senators want some sort of a ceiling? The ceiling is not available with a direct general fund transfer.

The Finance Committee bill contains a self-imposed ceiling that relates the receipts to expenditures of the trust fund and everything connected with the trust fund.

Do these receipts end up as refunds or exemptions? No, those are legitimate policy choices made by Congress in law. I cited the case of ethanol. There are others. Those receipts represent the burden users put on our roads. The trust fund then properly accounts for these users.

Where we have shifted the burden of an exemption or refund from the highway trust fund to the general fund, the Finance Committee has provided offsets. In the end the Finance Committee has made sure this will not add to the deficit.

To those who choose to ignore the political reality of the Senate, decisions made overwhelmingly by three other committees, decisions made last year on the budget we are still operating under with only 21 dissenters, the rest of the Senate decided there ought to be more massive amounts of money spent on roads.

That is the political reality of the Senate. I say to these people, what would you do? What would you do to make the trust fund a relevant part of the highway program, where it has been since we have had Federal gas taxes? What would you do to maintain the relationship of the trust fund receipts and trust fund spending? What would you do to avoid an open-ended general fund transfer where there is lesser, or maybe absent any, fiscal responsibility?

I get back to some old sayings that can say it better than I can, and I think I read in Lyndon Johnson's biography, ''The Master of the Senate,'' that Sam Rayburn said something about any jackass can push a barn down, but it takes a carpenter to build one.

We have a few people who are trying to kick the barn down. These people are not really interested in building a barn like the three authorizing committees are, as they tried to put something together. Albeit there might be some sort of disagreement about exactly what the right and ideal level of expenditure is, but they have worked hard. The American people want us building the legislative barn.

I turn to these people who do not want to build this barn—our Federal obligation under highways. It has been a pretty dominant Federal policy since Eisenhower and the interstate system, and of course a long time before that with other highways. They ought to quit kicking and focus on the reality of getting this highway bill done. The Finance Committee amendment took a step forward to getting this job done.

The Finance Committee did the job. We provided the funding. More importantly, we linked the highway receipts to the spending, and we did this in a deficit-neutral way.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank the distinguished chairman of the Finance Committee. I congratulate him and the ranking member for moving forward. I found the comments of my neighbor in Iowa to be particularly appropriate about the need to build the barn. Again, I express my thanks to our colleagues on the Environment and Public Works Committee, Senator JEFFORDS, Senator REID, and the others, for moving forward.

Right now we are asking that Chairman INHOFE return. He has an important meeting right now and he is going to come out to assure we can get more of this bill moving. We have a very short time window today. I know that on both sides of the aisle we would like to have people come down, offer relevant amendments, try to get as much of this bill moving as possible, and begin the voting process.

As I said, we have much work going on just off of the Senate floor as we try to move this legislation forward. We have several more pieces of SAFETEA to be brought forward. We are working with the other committees involved to make sure they come forward. I believe Chairman SHELBY from the Banking Committee will arrive shortly to bring forth a mass transit bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. Mr. President, at this time I would like to recognize Senator SHELBY for some comments about his amendment and then reclaim the floor.

Mr. REID. Mr. President, reserving the right to object, was this a unanimous consent request?

Mr. INHOFE. No.

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

The Senator from Alabama.

AMENDMENT NO. 2269

(Purpose: To amend chapter 53 of title 49, United States Code, relating to the authorization of Federal funding for public transportation, and for other purposes)

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

The PRESIDING OFFICER. Without objection, the pending amendment is set aside, and the clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SHELBY] proposes an amendment numbered 2269.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. SHELBY. Mr. President, the text of this amendment is identical to the legislation that the Banking Committee ordered reported from the committee by a voice vote yesterday. In other words, it was a unanimous vote in the Banking Committee.

I rise today in support of the Federal Public Transportation Act of 2004. This is the bill, as everyone knows, that was successfully reported out of the Committee on Banking, Housing, and Urban Affairs yesterday.

I am proud of this piece of legislation which was crafted on a bipartisan basis with cooperation from the distinguished Senator from Maryland, Mr. SARBANES, the committee's ranking member.

This amendment, which I hope will be part of the bill, provides record growth for public transportation at $56.5 billion—a 57-percent increase over TEA–21. This funding level tracks with the growth in the highway program to $255 billion. This combined funding will go a long way toward improving and expanding upon our Nation's transportation infrastructure. I am pleased, as I said, to be working with the Environment and Public Works Committee chairman, Senator INHOFE, to accomplish this goal.

Our amendment, which will be part of the bill, we trust, accomplishes three important policy goals. It creates funding flexibility, increases accountability, and improves the performance and efficiency of the transit programs in the United States.

The bill creates several new formulas to better address growing transit needs. A rural low density formula is created to allow for transit services in sparsely populated areas where employment centers and health care are great distances apart. A growing States formula is created to allow communities with populations projected to grow significantly in the coming years to put in place needed transportation infrastructure. A small transit intensive cities formula is created to address the needs of communities where the level of transit service exceeds what their population-based formula provides.

Our bill also creates a super-high density formula to provide additional funding for States with transit needs that are particularly great because they have transit systems in extremely urban areas with high utilization rates.

The bill increases the accountability within the transit program. It rewards transit agencies to deliver products that are on time, on budget, and provide the benefits that they promised. Further, this bill allows communities to consider more cost-effective, flexible solutions to their transportation needs by opening up eligibility of a new starts fund to nonfixed guideway projects under $75 million in cost. With this change, other solutions can be fostered, such as bus rapid transit, which can produce the majority of the benefit of rail at a fraction of the cost.

Finally, the bill seeks to improve the performance and efficiency of transit systems nationwide. It provides incentives for the coordination of human service transportation activities to eliminate duplication and overlap. It increases the focus on safety and security needs with transit systems to insulate them against terrorist attacks. It also enhances the role of the private sector in providing public transportation in an effort to reduce costs and to improve service.

In short, the Federal Public Transportation Act is a good bill and one that will dramatically improve the public transportation program to help Americans with their mobility needs in urban and rural areas nationwide.

I commend this to the Senate and ask my colleagues for their support.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I rise to join my distinguished colleague from Alabama, chairman of the Senate Committee on Banking, Housing, and Urban Affairs, in very strong support of the Federal Public Transportation Act of 2004.

First, let me express my appreciation to the chairman of the Banking Committee, Senator SHELBY, who has worked assiduously on this legislation, reaching across the aisle in a most cooperative manner to develop a transit bill that will begin to address the urgent needs faced by communities all across the country.

As a result of his efforts and those of other members of our committee on the transit bill, the Federal Public Transportation Act of 2004 was reported out of the Banking Committee yesterday morning with unanimous support. Every member of the committee supported this legislation.

Let me also acknowledge the contributions made by Senator ALLARD of Colorado and Senator REED of Rhode Island, the chairman and ranking member of our Housing and Transportation Subcommittee, who have worked with us step by step to develop the package that is being brought to the floor of the Senate.

I also thank the distinguished leadership of the Environment and Public Works Committee, Chairman INHOFE

and Ranking Member JEFFORDS, as well as the leadership of the Finance Committee, Chairman GRASSLEY and Ranking Member BAUCUS, with whom we have worked closely in order to address a number of important issues related to the financing of this bill. Without their help and the very committed work of the Senate leadership, Majority Leader FRIST and Minority Leader DASCHLE, I doubt that we could be where we are today. I think it is important to recognize the broad effort and the broad support that exists for this legislation.

As we approached the expiration of the previous surface transportation bill, the Transportation Equity Act for the 21st Century, known as TEA–21, the Banking Committee and its Housing and Transportation Subcommittee held a series of hearings—some at the full committee level and some at the subcommittee level—on the Federal transit program and its contribution to reducing congestion, strengthening our national economy, and improving our quality of life.

Over the course of those hearings, which extended over roughly a 2-year period, we heard testimony from dozens of witnesses, including Secretary of Transportation Norman Mineta, Federal Transit Administrator Jenna Dorn, representatives of transit agencies from around the country, mayors, business and labor leaders, environmentalists, and transit riders—virtually all of the stakeholders in this important matter—and including economic development experts, a very important dimension of this, to which I will refer again shortly.

Virtually all of the witnesses we heard agreed that the investment that had been made under TEA–21—in other words, the predecessor legislation to what we are now considering in the Senate—contributed to a renaissance for transit in this country. In fact, transit has experienced the highest percentage of ridership growth among all modes of surface transportation, growing almost 30 percent between 1993 and 2001.

We also heard testimony about the other benefits of transit. For example, the U.S. Chamber of Commerce testified that $1 billion of capital investment in transit creates almost 50,000 jobs. Moreover, the economic development benefits of transit are becoming more and more apparent as new systems come into service. For example, we heard testimony from one of the county commissioners in Dallas that over $1 billion had been invested in private development along Dallas's existing and future light rail lines, raising nearby property values and supporting thousands of jobs.

We heard from a representative of BellSouth that his company decided to relocate almost 10,000 employees from scattered sites in suburban Atlanta to three downtown buildings near the MARTA rail stations because, as he put it, transit ''saves employees time. It saves employees money. It saves wear and tear on the employees' spirit.''

Transit benefits the economy in other ways as well. For example, transit investments in one community can have repercussions in many areas around the country. The president of the American Public Transportation Association, Bill Millar, who has testified before the Senate on a number of occasions and has brought extraordinary leadership to this effort, pointed out that when one locality builds a rail system or develops its bus system, much of that construction or the assembly of those buses may well be done in a different jurisdiction. So one has to keep in mind when considering the economic benefits, it is not just the area that is upgrading the transit system that is getting the money, but that area in turn is spending its money on a whole range of supplies and services which take place elsewhere in the country. When Texas cities buy buses, for example, it may be a company in Colorado that is producing the buses. As Mr. Millar said, ''While the Federal money would appear to be going one place, the impact of that money tends to go very far and wide.''

Of course, transit is about more than our economic life. It is also about our quality of life. During our hearings, we heard a great deal about the importance of transit to our senior citizens, our young people, the disabled, and others who rely on transit for their daily mobility needs. There is a population out there, significant in number, whose mobility depends on transit systems. They do not have the alternative of the automobile.

Several of our witnesses observed that the increased investment in transit and paratransit services under TEA–21, the previous legislation, provided the crucial link between home and a job, school, or a doctor's office, for millions of people who might not otherwise have been able to participate fully in the life of their community.

Further, we saw after September 11 how transit can be an important lifeline in other respects, as well. We had very moving testimony during our hearings about the efforts made by transit operators on that day to move tens of thousands of people quickly and safely out of our city centers.

As a result of transit's many benefits, the demand for transit is continuing to increase all across the Nation. States that for a long time had no interest in transit now have a very keen interest in transit. I say to the Presiding Officer, the State of Nevada is developing major transit in the Las Vegas area, for example, and it is made necessary by the population explosion which has taken place in that State over recent decades. Small towns, rural areas, suburban jurisdictions, large cities, all are struggling to keep up with the need to provide safe and reliable transit service for their citizens.

The Department of Transportation has estimated that nationally communities will need $14 billion per year in capital investment simply to maintain the condition and performance of their transit systems, let alone what is necessary to improve conditions and service. If we do not make this investment today, we will be left with deteriorating infrastructure and worsening congestion tomorrow and that, of course, would be a depressing influence on our economy and would undermine our economic strength and vitality.

The legislation before the Senate authorizes $56.5 billion in transit investment over the next 6 years. This is the amount approved by the Senate during consideration of the fiscal 2004 budget resolution and represents a substantial increase over TEA–21. Most experts conclude it is not adequate to address all the transit needs of the Nation, but it does represent a significant step forward in our efforts to improve our citizens' mobility and strengthen our national economy through investments in our transportation infrastructure.

The legislation maintains a feature of both ISTEA and TEA–21, the two previous surface transportation acts, namely, parity between the transit program and the highway program so that they will be able to move ahead in a parallel and comparable fashion. We are appreciative of our colleagues on other committees for recognizing the importance of that proposition.

Moreover, the legislation maintains the existing 80% Federal match on new starts transit projects. Again, that maintains the parallelism that has existed between highways and transit so that the decision being made at the local level is not weighted in one direction or the other because of the match that is required in order to move forward with the transportation infrastructure. Mayor McCrory of Charlotte, North Carolina, made this point at one of our hearings when he observed that ''there's a strong need to keep the program 80–20, as we do for other forms of transportation, including roads. That does send a strong message that transit is as important as our road network.''

The proposal brought forward by Chairman SHELBY provides for growth in both the urban and rural formula program, with added emphasis placed on the rural program. The committee was sensitive to the needs of the rural areas of our country, and the rural program will see significant growth in order to help States with large rural areas provide the services their residents need.

The bill also increases the Fixed Guideway Modernization Program. This funding is very important to helping cities with older rail systems, which in some cases were built almost a century ago, make the investments needed to preserve those highly successful systems, which move millions of people every working day.

The New Starts program, which helps communities make their first major investment in transit as well as expand

existing systems, also grows under this bill. The New Starts program will allow communities to address their growing needs with transit investment and gain the benefits of transit that exist elsewhere in the country.

The bill makes a significant change in the New Starts program by allowing New Starts funding to be used for the first time to fund transit projects that do not operate along a fixed guideway, as long as the project is seeking less than $75 million in Federal funds. There are a few projects of this type currently operating the Nation, and I hope to work with the Federal Transit Administration to ensure that the FTA develops an appropriate quantitative methodology for evaluating the costs and benefits of such projects, particularly as they relate to land use and economic development impacts. As we begin to experiment with different forms of transit service, we must be careful not to adversely impact FTA's highly competitive and successful process for moving projects through the New Starts program.

While the bill preserves the general structure of TEA–21, several new formulas are included to target transit funds more directly to those states and cities with extraordinary transportation needs. The bill includes a new Growth and Density Formula: the growth portion will distribute funds to all states based on their expected future population, and the density portion will provide funding to those states whose populations are above a certain density threshold. The bill also includes an incentive tier to reward small transit-intensive cities—those cities with a population between 50,000 and 200,000 which provide higher-than-average amounts of transit service. The funds distributed under these new formulas will help communities address their unique transportation needs.

So there is an effort in this legislation to recognize the various types of transit needs across the Nation. Of course, as you do any formula, no one gets as much as they would like to get, but you work within certain constraints. Given the framework within which the committee had to work, I think we have responded fairly and rationally to the needs that have been expressed to us. We have a new growth and density formula in this legislation. We make some changes in the fixed guideway program to give a little more discretion for smaller projects. But, all in all, I think this is a balanced package. I commend it to my colleagues, and of course I am happy to discuss with any of them any questions they may have.

I want to highlight just a few more of the bill's provisions. The bill includes a requirement that metropolitan planning organizations develop a public participation plan to ensure that public transportation employees, affected community members, users of public transportation, freight shippers, private sector providers—all the interested parties concerned about the transportation infrastructure—have an opportunity to participate in the transportation plan approval process. Transportation investments are among the most important decisions made at the local level. I firmly believe all interested parties should have an opportunity to contribute to this process. Our transportation infrastructure is central to making our economy, and indeed our society in a broader sense, work day to day. That is why this is such a critical and important piece of legislation.

I am pleased that the legislation includes a new transit in parks program to help national parks and other public lands find alternative transportation solutions to the traffic problems they are now facing. This is a program the administration supports, and it has had very strong bipartisan support in the Senate. It is an effort to address the problem, made manifest in certain of our Western national parks, of the overcrowding that has come with increased visitation. You have people who wait in line all day long to get into Yosemite, for example. They get to the entrance and they cannot get in, because the park's roads and parking lots are at capacity. It is a very serious problem.

TEA–21 required the Department of Transportation to conduct a study of alternative transportation needs in our national parks and other public lands, and that study confirmed that the parks are ready and willing to develop transit alternatives. This legislation will help the parks make investments in traditional public transit, such as shuttle buses or trolleys, or other types of public transportation appropriate to the park setting, such as waterborne transportation or bicycle and pedestrian facilities.

I also want to note that the bill makes a number of modifications to section 5333(b), known as section 13(c), the transit employee labor protections. These provisions were the result of extended discussions between the transit labor unions and members of the committee who were concerned about the impact of 13(c) on the transit program. I note that section 13(c) has been a part of every transit bill since 1964, providing crucial collective bargaining and job right protections. It has served to unify a broad coalition of transit industry and employee representatives to form a unique partnership which has worked together to expand the Federal transit program to what it is today: an unequivocal success. I want to mention one modification which addresses the concerns of members regarding issues arising when one private contractor replaces another private contractor through competitive bidding. Such rights were addressed in the Department of Labor's Las Vegas decision dated September 21, 1994, as amplified by letter dated November 7, 1994. This legislation includes language in section 13(c) to ensure that the Department of Labor's decisions involving so-called ''contractor to contractor rights'' are governed by the standards set forth in the Department's Las Vegas rulings, without otherwise affecting employee rights under section 13(c). In addition, I note that the changes to section 13(c) are not intended to impact the level of protections covering freight rail employees existing on the date immediately preceding enactment of this act.

There are a number of other provisions in the legislation that modify previous aspects of the transit programs, but for the most part the committee's intention was not to enact major changes to a program that has worked well.

For example, while the bill enhances the role of private-sector transit providers in several ways, it was not intended to change the long-standing congressional policy that decisions involving the choice between public and private transit operators should be left to local authorities who are better equipped to make local transportation decisions, and the Federal Government should remain neutral with respect to such local decision-making. In addition, while the definition of public transportation is modified slightly in the bill, the intent is to clarify, rather than change, the universe of modes and services encompassed by that definition.

And as I indicated earlier, some of the changes with respect to the formula seek to be sensitive to ensuring that all parts of the country can participate in the transit programs. But we have tried to essentially maintain most of the previous arrangements which have worked so successfully.

I conclude by saying that this amendment provides essential support to our local and State partners in their efforts to combat congestion and pollution and to ensure that their citizens can access safe and reliable transit services. That is why the bill is strongly supported by a number of associations representing local officials, transit providers, environmental groups, and others.

In a letter received by the committee yesterday, the American Public Transportation Association stated:

> We support your commitment to retain the overall structure of the federal transit program and the decision to increase federal investment in transit infrastructure. This increased investment will not only improve and modernize the nation's transportation system, but it will also create and sustain millions of badly needed jobs.

Mr. President, I ask unanimous consent that that letter, along with other letters of support, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SARBANES. Mr. President, I will close by saying, as these letters demonstrate, the legislation we are considering today is vitally important to

keep America moving forward in the 21st century. It is no exaggeration to say this is essential legislation for the future strength and vitality of our economy and of our society. I very strongly urge my colleagues to support the legislation that has been brought forward from the Banking Committee, as I said, on a unanimous vote in a markup yesterday morning.

I yield the floor.

EXHIBIT 1

COMMUNITY TRANSPORTATION ASSOCIATION,
February 5, 2004.

Hon. RICHARD SHELBY,
Chairman, Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.
Hon. PAUL S. SARBANES,
Ranking Minority Member, Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS SHELBY AND SARBANES: We'd like to take this opportunity on behalf of our more than 7,000 members providing community and public transportation services around the nation, as well as the millions of Americans who rely on these services every day, to commend you for your leadership in the creation of the Federal Public Transportation Act of 2004.

This groundbreaking legislation builds the kind of 21st century transportation network our nation needs. We're pleased that it recognizes the real character of public transportation and invests in transit for communities of all sizes and locations. At long last, this bill begins to adequately address the transportation needs of rural Americans and of senior citizens.

Much of the success we've enjoyed in the past six years in community and public transportation was based upon the innovative guarantees and protections for transit financing made by the federal government in TEA–21. Continuing these guarantees in this important legislation is essential.

There's an old proverb that says the journey of a thousand miles begins with a single step. This bill is a giant step toward building the foundation for America's transportation future.

We're grateful. Thank you on behalf of our members, and on behalf of the American people.

Sincerely,

DALE J. MARSICO,
CCTM, Executive Director.

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION,
Washington DC, February 4, 2004.

Hon. PAUL S. SARBANES,
Ranking Minority member, Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR SARBANES: On behalf of the 1,500 member organizations of the American Public Transportation Association (APTA), I write to express our appreciation for your outstanding efforts in marking up the Federal Public Transportation Act of 2004 today. We strongly support the bill and urge Senators to oppose any amendments that would upset the carefully crafted compromise that the Banking Committee developed. In addition, we understand that an amendment will be offered to guarantee funding for transit and highway investment authorized under the transportation bill (S. 1072) now under consideration on the Senate floor. We strongly support that amendment as well, and urge the Senate to adopt it.

ABOUT APTA

APTA is a nonprofit international trade organization of more than 1,500 public and private member organizations including transit systems and commuter railroads; planning, design, construction and finance firms, product and service providers; academic institutions, state associations and departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. Over ninety percent of riders using public transportation in the United States and Canada are served by APTA member systems.

SENATE BANKING COMMITTEE BILL

APTA applauds your leadership in crafting this important legislation. We support your commitment to retain the overall structure of the federal transit program and the decision to increase federal investment in transit infrastructure. This increased investment will not only improve and modernize the nation's transportation system, but it will also create and sustain millions of badly needed jobs.

CONCLUSION

Again, please accept APTA's gratitude and support for your efforts. We look forward to working with you to enact legislation that addresses the nation's critical need to maintain and improve our surface transportation infrastructure. If we can be of assistance in any way please have your staff contact me or Rob Healy of APTA's Government Affairs staff.

Sincerely yours,

WILLIAM W. MILLAR,
President.

THE UNITED STATES CONFERENCE OF MAYORS,
February 5, 2004.

Hon. WILLIAM H. FRIST,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. THOMAS A. DASCHLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. RICHARD C. SHELBY,
U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. PAUL S. SARBANES,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS: In January the United States Conference of Mayors met in Washington, D.C. for our 72nd Winter Meeting to chart a new agenda for keeping America's metropolitan economies strong. The cornerstone of that agenda is the reauthorization of TEA–21 that invests in public transit.

From that discussion we write to express our support for the Senate Banking Committee transit title funding level providing $56.5 billion over six years for the federal transit program with at least $47 billion of the $56.5 billion for the transit program from the Mass Transit Account of the Highway Trust Fund. We also urge you to protect the funding guarantees and firewall for the transit program in its entirety.

Mayors know all too well the negative impacts of increasing congestion on our cities and recognize that anything less than $56.5 billion for transit will continue America's dependence on the automobile and continue the funding challenges for the rail modernization, new starts, and bus programs.

We applaud the Banking Committee's work on reauthorizing the transit title of TEA–21 and look forward to providing further feedback on other issues in the bill once we are able to review the entire proposal. With strong backing from mayors across the nation, we stand ready to work with you on the reauthorization of TEA–21.

Sincerely,

JAMES A. GARNER,
Mayor of Hempstead, President.

FEBRUARY 5, 2004.

Hon. RICHARD SHELBY,
Chairman, Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.
Hon. PAUL S. SARBANES,
Ranking Minority Member, Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SHELBY AND RANKING MINORITY MEMBER SARBANES: On behalf of the Surface Transportation Policy Project and its many partner organizations, we are writing to convey our support for the ''Federal Public Transportation Act of 2004'', legislation approved February 4 that provides for a 6-year, $56.5 billion program commitment to public transportation as well as other critical transportation policies under your Committee's jurisdiction.

We want to commend you and members of the Committee for renewing the key program elements of current law, ensuring that the recent successes in improving public transportation services under TEA–21 will continue into this next renewal period. Our support for this package, however, is conditioned upon resolving outstanding funding issues with the full Senate regarding funding guarantees and firewalled spending to ensure that the critical feature of TEA–21 that made expanded transit investment and improved services possible is part of the final package. This must ensure that transit providers, other agencies and the public can count on the full $56.5 billion over the 6-year renewal period.

Specifically, we want to applaud your efforts to protect the core elements of the existing program structure, ranging from continuation of the Rail Modernization program to the Jobs Access and Reverse Commute program, while finding resources to support new policy efforts such as those envisioned under the President's New Freedom Initiative and Transit in the Parks program. Finally, we also want to convey our support for the Committee's affirmation of current law protections for clean air conformity and other clean air-related provisions as well as preserving other important current law policies governing NEPA and other project delivery elements. It is our firm position that final provisions in the Senate bill must fully account for the need to consider fairly and fully transportation alternatives that minimize or avoid adverse impacts and affirm locally determined priorities. In this way, this renewal legislation will ensure that State and local investment decisions are more balanced, offering more choices to the public and making continuing gains in air quality and other community health and environmental objectives.

We support your legislation with the aforementioned condition and urge your colleagues to support it fully during Senate action on TEA–21 renewal.

Sincerely,

America Bikes, Association for Commuter Transportation, American Society of Landscape Architects, Chicago Bicycle Federation, Environmental and Energy Study Institute, Environmental Defense, National Association of Railroad Passengers, National Parks Conservation Association, National Recreation and Park Association, Natural Resources Defense Council, Sierra Club, Smart Growth America, Surface Transportation Policy Project, Union of Concerned Scientist.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. While the ranking member and the chairman are in the Chamber, I wish to express my appreciation—and I think that of the entire Senate—for the bipartisan bill that is now going to be part of this highway bill. These two men—the senior Senator from Alabama and the senior Senator from Maryland—are legislators. They are experienced. They understand when there is a time to be partisan and when there is a time not to be partisan. They understand when it is important to move forward for the good of this country. And that is what they did.

Without their leadership, we could not be in our present position. We have the highway portion of this bill that has been laid down. We have a few of our little technical things to do before they are joined together perfectly, but the transit portion of the bill—they are both excellent pieces of legislation. The transit portion of the bill affects all of our country.

As the Presiding Officer knows, the city of Las Vegas—and Reno to a lesser extent—is very dependent on transit moneys now. I cannot say enough to express my personal appreciation and that of the Senate for the work done by these two fine men. This is good legislation. I hope we can move forward on it quickly.

I wish to say, after having issued this compliment, with which I want the RECORD to be spread, that I have worked with Senator INHOFE on this legislation for now more than a year, and Senator BOND, and, of course, my distinguished former chairman and ranking member, Senator JEFFORDS.

The concern I see at this stage—we have been on this bill for some time now, a matter of days—is that we have not moved far. We started at the goal line, and we are at about the 5-yard line. We have to get to the other goal line, which is 95 yards away.

There is an issue that has been brought up by the distinguished senior Senator from the State of New Hampshire. I was talking to some of my friends earlier today. We have very few people in this legislative body who are as experienced as the senior Senator from New Hampshire—a House of Representatives Member, Governor, now a Senator—and he has brought forward an amendment he believes in, and he is not going to leave until something happens on this amendment. He may leave physically, but he is going to be around here. We are going to have to dispose of this amendment.

It is obvious now that the majority will not accept a voice vote. We do not have enough votes to table the amendment, and I would not vote to table his amendment anyway. So we have, on this amendment, a filibuster. That is what it is. It is a filibuster by I don't know how many members of the majority, but at least one.

I think we should recognize that it is holding up this bill. This bill is a very important piece of legislation: $255 billion that has been supported by trust fund moneys—all but $30 billion of it. The other $30 billion has been accounted for.

In my opinion, the administration has signed off on this. Any veto threat they have issued has been related to what they are trying to do in the House. So as hard as the chairman of the committee, Senator INHOFE, has worked, he cannot do anything as long as he has people on his side trying to hold up this bill. I think there has to be a decision made on what we are going to do about this. We have spent a couple of days hoping the senior Senator from New Hampshire would go away. I have had a lot of experience with him and he doesn't go away very easily.

I think we should recognize that we have an amendment that is popular and it has been brought here previously and more than 50 people will support his amendment. Whether 60 people will support it is another question. The leadership should understand that this bill is not going anyplace until we dispose of this amendment. It is extraneous, as the chairman will recognize. On this side, we believe in this bill and we thought, at least during this week, there should be no extraneous amendments offered.

We want to get the bill passed. This is important to the people of this country. If we want to create jobs, this is the way to do it: pass the highway bill. As many as 2 million jobs could be created with this highway bill. So I hope the majority realizes the predicament they are in. We are willing to work with them in any reasonable way to try to move beyond where we are today. Just giving speeches out here on the bill is not going to do the trick. If we want to pass the bill, we are going to have to, in effect, get rid of the Gregg amendment. I have to be careful how I say this. One of my friends told me something the other day. We were in a huddle talking about the bill, and I said: We are going to have to figure out a way to get rid of JUDD GREGG.

He said: You better be careful saying stuff like that. In England, the history is very clear that on the occasion when the King said the Archbishop is causing me a lot of problems, a couple days later three people went out and assassinated the Archbishop.

We certainly don't mean to apply that to JUDD GREGG. We are talking about his amendment, not him personally. It is a problem with his amendment.

Mr. INHOFE. Mr. President, first of all, I am sure we all appreciate that clarification. I often wish the Senators who are not on the committee knew the time, effort, the bridges we have crossed, the compromises we have made, and the time we have spent. We have some provisions that have nothing to do with the formula or the issues or the nongermane issues that the Senator from New Hampshire has. It has been very difficult. It has taken many hours and committee hearings. We have had people coming in from local governments and State governments to get where we are today.

We would like to have gotten to this point back when the other authorization ran out but were unable to do it. We made a commitment that we would be there, and we are capable of being there now when this expires on February 29. So there is going to be every effort to get that done.

I know the Senator from Rhode Island wants to be heard. It will be my intention to reclaim the floor at the conclusion of his remarks.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I commend Chairman INHOFE for his great effort to move the highway provisions forward. I very much would like to speak about the public transit issue.

Let me begin by commending Chairman SHELBY and Ranking Member SARBANES for their extraordinary efforts on a bipartisan basis to ensure that we continue the success that we have enjoyed since TEA–21 with our public transit programs throughout the country. I also thank Senators DASCHLE, JEFFORDS, SANTORUM, and BAUCUS for their efforts to convince the Finance Committee to provide us with the adequate resources that were necessary to bring this transit bill to the floor.

The bill before us today is a strong step forward toward meeting our Nation's significant transit needs. Over the course of the last 2 years, I had the opportunity, first, to serve as chairman of the Subcommittee on Housing and Transportation of the Banking Committee, and then as ranking member to my colleague, Senator WAYNE ALLARD of Colorado. Our joint tenure as chair and ranking member, respectively, allowed us to look deeply at the issues confronting transit throughout the United States. We had a number of hearings and we were able to get a broad-based spectrum of witnesses to talk about the successes and the challenges that face transit throughout the United States.

We heard from each region of the country—northern and southern, rural and urban. Mass transit is not exclusive to one region. In fact, what we are finding throughout the country, particularly as metropolitan areas grow and transit needs increase and commuting increases, every community is looking for ways to incorporate transit in their overall transportation plan—not simply to move people but also to meet environmental standards, which are increasingly difficult to achieve without some type of transit system. We heard from businesspeople, environmentalists, senior citizens, the disabled, and those making the transition from welfare to work. We heard from the administration and from academics who are experts in the field of transit.

Now, while these witnesses did not agree about every detail, they shared

one central message: TEA–21 works. The current Federal program for transit support works very well, but preserving that success is jeopardized by one simple thing: resources. We have to reinforce success. If we do not provide the resources and continued commitment, we will lose that success; we will disadvantage communities throughout this country.

Mr. President, I am very pleased today that the bill we have before us in the Senate makes some changes to current law, but it takes that central message to heart and provides increased resources to meet the demands of all of our communities for more effective public transportation.

When we passed TEA–21 years ago, transit funding doubled and ridership rose by 28 percent—faster than any other mode of transportation. Mass transit is increasing faster in terms of its use by the American public than any other form of transportation. Another example is how this program is being successfully greeted enthusiastically by people throughout this country. It is my hope the bill before us, which would provide $56.5 billion for transit of all types, can help achieve the same levels of return on our investment, and that we see a continued increase in ridership and use. That has a positive effect in terms of moving people throughout metropolitan areas and rural areas to get to their jobs. It has a positive effect in terms of making the cost of transportation lower for most people. Also, as I mentioned, it has beneficial environmental effects.

This bill would increase our transit formula programs by 56 percent, on average, and no State sees a rate of increase below 37 percent for its apportionment, and the vast majority of States are at or above the national average.

The bill is not just an urban transit bill. Indeed, rural transit programs would grow from $1 billion under TEA–21 to almost $3 billion under this legislation.

The committee also responded to the needs of States experiencing the highest rates of population growth and those States with high levels of population density by creating a new program to address the traffic congestion so commonly experienced in these areas.

The bill also increases funding for the Elderly and Disabled Transit Program from $90 million in the current fiscal year to $187 million in fiscal year 2005 and would continue to increase this essential program to a total of $248 million in fiscal year 2009.

This legislation will also provide significantly greater discretionary funding to improve our Nation's bus fleets and expand or construct new transit projects.

One of the areas that was of great concern to Senator ALLARD and I in our deliberations was the impact of 9/11 on our transit system. This legislation recognizes that after 9/11, we can't assume that transit is just business as usual. We all recognize the vital role that transit played in mitigating the damages, both in New York City and in Washington, DC.

The transit system in Washington, DC, was remarkable in terms of moving and evacuating the city. The transit system in New York City was critical in literally saving thousands of lives as alert and experienced transit operators were able to close stations, move people out of stations, reroute trains, and save thousands of lives. We have to learn from that example. We have to incorporate in this legislation—and I am proud to say we do—the responsibility and also the flexibility so that local communities can use transit funds to prepare their workforce for these types of dangers. It is something that is necessary and something, indeed, I am proud to see.

We held two hearings in the subcommittee with respect to transit safety issues. In addition to that, Senator SARBANES and I commissioned a GAO study to look at the security needs for transit systems. Those needs are significant. This bill at least attempts to provide the resources to begin dealing seriously with those transit security needs.

Indeed, I am glad recommendations by the GAO have been incorporated in the bill before us. I am particularly pleased that urban grant recipients will be able to use their Federal funds to better train their personnel in security needs, as well as conduct emergency response drills to prepare for a potential terrorist incident. Such training is one of the single most important things that transit agencies can do to improve their passenger security.

This is an important step forward toward improved transit security. But there are two other issues that Congress and the administration must address.

First, the Department of Homeland Security must formally accept its responsibility for protecting the millions of Americans who ride our bus and rail systems every day. I hope to offer an amendment, when appropriate, to this legislation to ensure the Department of Homeland Security does take these responsibilities seriously. And second, improved transit security will require more resources than we are able to provide within the context of this reauthorization bill. I hope I can count on all of my colleagues to support increased funding for the Department of Homeland Security appropriations so that it can use those funds to enhance the security of transit systems throughout this country.

One of the unfortunate aspects of the world in which we live is that our foes seek the weakest links when they choose to attack us. Unfortunately, we have not invested in transit security to the degree we have in aviation and port security. It is, unfortunately, the weakest link, and we have to improve it.

Transit is an essential part of our Nation's economy in every region of the country. The investments in this legislation will help to ease congestion on our highways, reduce pollution, and provide for a smoother functioning and more efficient economy. I urge all of my colleagues to support this important measure.

Once again, I commend Chairman SHELBY and Ranking Member SARBANES for their great efforts, and also Senator INHOFE and Senator JEFFORDS for their leadership on the highway bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I thank the chairman and ranking member of the Banking Committee not only for their work on this important part of the legislation but also for their willingness to work with me to reconcile the environmental provisions that are contained in this amendment with the provisions contained in S. 1072.

S. 1072 amends title 23 of the United States Code to provide for adjustments in the transportation planning process. The amendment the Banking Committee has admirably drafted contains similar provisions that amend title 49 of the code.

I understand that for the sake of good policy—that is, minimal confusion to the entities that must implement this law—the chairman and ranking member are willing to work with us to craft provisions that are consistent with the two titles. I thank the Senators for their help.

Mr. President, I am also very pleased that the bill the Environment and Public Works Committee reported contains a provision that will help fund community efforts to provide safe routes to schools for schoolchildren who walk or who ride their bikes to school.

This would include funding for overpasses, underpasses, red lights, or other ways to help reduce accidents and keep schoolchildren safer.

The exact use of the funds would depend on the needs of the local community. The funding is important because many school districts have a policy of prohibiting bus service for children living within a mile or perhaps a half mile of the school.

A National Academy of Sciences report shows that, on average, almost 16,000 schoolage children per year are injured or killed during normal school travel hours. Let me repeat that number. Almost 16,000 schoolchildren are injured or killed during normal school travel hours. Thus, I support strong funding for safer routes to the schools.

I know that in my home State of Vermont, especially in the dark winter mornings when it is icy, schoolchildren can be at risk while walking to school. When Vermont warms up, many schoolchildren may choose to ride bikes to school, and we should make it as safe as possible for them to get safely to and from school.

Often school districts do not provide bus service to children living near the schools they attend. Yet research shows that many children are injured within a mile or so of their homes.

The provision in our bill will provide $70 million per year to help States and local communities reduce these serious risks to schoolchildren. The committee report notes that the purpose of this program is to enable and to encourage children to walk and bicycle to school and encourages a healthy and active lifestyle by making walking and biking to school safer or a more appealing transportation alternative for those living close to school.

I look forward to working with the other body on this important initiative. I know that safe routes to schools is important to my friend, Congressman OBERSTAR, and to a great many of his colleagues.

I thank Senators INHOFE and BOND for working with Senator REID and me on this important issue. We worked out a strong provision regarding safe routes to school.

Mr. President, I wish to briefly discuss the freight provisions we have included in this bill. We have crafted a package that provides considerable flexibility to States and metropolitan planning organizations in addressing freight rail concerns.

We have made improvements to intermodal freight transportation projects eligible for the Surface Transportation Program and the National Highway System funding.

We will have each State designate a freight coordinator to assist in integrating freight concerns into statewide planning and metropolitan planning.

We have also included funding to improve the condition and performance of the National Highway System intermodal connectors. These connectors are those last mile connections to ports and other freight-related facilities that experience a high volume of traffic and have not received the proper amount of attention in the past.

These freight rail provisions make our bill very responsive to the needs of the freight community.

These are important sections of the bill. I wish to emphasize the need for transit improvement. As we travel around this Nation, from California to New York—wherever we go—we have to develop better ways for our transit systems to be more effective. Looking worldwide, we have seen incredible improvements in some countries that are very populous with the utilization of new transit systems and new modes of transportation, such as maglev and other evolving systems. This is very important, and it is going to be more important as we continue to go forward and continue to increase the number of automobiles on our highways.

Mr. President, I yield the floor.

Mr. INHOFE. Before the Senator yields the floor, will he yield for a question?

First, I appreciate the fact the ranking member of the committee is bringing up these issues. Everything he mentioned was controversial. Fortunately, we didn't have to handle a lot of the problems with transit because that was done in another committee, and I certainly commend the chairman of the committee, as well as the ranking member, as well as the subcommittee ranking member and subcommittee chairman. I understand the subcommittee chairman is going to come on the floor and make some comments.

When the Senator talks about safe routes to school, I think that is a good example of the weeks and months we spent coming to an agreement. Frankly, Senator JEFFORDS is the one driving force to get up from $50 million to $75 million. I felt that perhaps priorities could be in some other areas.

In looking at this, I want to commend the Senator for the work he did because I think he is right. We probably spent several months just on the freight area. Everyone knows that was not adequately addressed in TEA–21 and was not adequately addressed in ISTEA. I appreciate very much the time the Senator has spent in these very sensitive and controversial areas where it was give and take, it was compromise. Many times we gave up something we believed in in order to accomplish it and come up with a bill, a good bill, which we have right now.

Mr. JEFFORDS. I thank my chairman. I understand his dedication to doing so much more as we go forward. We are accomplishing a lot today, and yet we still have to sit down and look to the future as soon as we are done with the present.

Mr. INHOFE. I thank the Senator.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I ask if the chairman of the committee has any further comments to make concerning this particular part of the bill, the transit portion.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I hope we can get together in the hours to come and try to put a package together, perhaps, and move this bill. This is an important bill in America for highways and transit. It affects everybody in America. It affects every Congressman's district, every Senator, and I think it is too important to ignore in any way.

I commend the senior Senator from Oklahoma, the chairman of the committee, for the work he has done. He has been pushing this highway bill—I know because he has been pushing me—for months and months. I do not know how many hours of work he and his staff have put in, along with Senator JEFFORDS, Senator BOND, and others. This is just too important. It affects so many Americans. It covers everything dealing with our infrastructure, and it will be good for the economy.

The Presiding Officer comes from one of the fastest growing States in the United States. Moving people in his State, as well as a lot of others, is very important. There has to be lead time to plan. I believe this is a good bill, considering everything. We have put it together in a bipartisan way in the Banking Committee where we, as well as the other committee, have authorization for transit. I stand ready to work with the principals to move this bill as soon as possible.

I yield the floor.

Mr. JEFFORDS. Mr. President, I recognize my good friend from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I concur with the remarks made by Chairman SHELBY. I think they are right on point. I want to stress again to my colleagues, as I understand it, the highway bill was brought out of the Environment and Public Works Committee with an overwhelming vote, almost unanimous but not quite. I think there were two exceptions, but otherwise all members of that committee on both sides of the aisle were supportive of this legislation.

The transit part that is being offered as a title or an amendment to the highway bill came out of the Banking Committee with a unanimous vote. I think this reflects the fact that in both venues, both forums, a major effort was made over a sustained period of time to address the problems Members confronted and to try to develop a formula, an allocation, and other provisions of the legislation that would be responsive to their needs.

So I say to my colleagues, this is legislation that has been very carefully developed. It has been worked over and over and I think it is a very good product. I think it has struck a very good balance. I think it contains within it a vision for the country.

There is a clamor across the country for this legislation on the part of the public and on the part of all of the stakeholders who deal with these issues. State governments, local governments, the various highway and transit groups, business interests, labor interests, are all strongly supportive of this legislation.

The reason they are so strongly supportive is because they recognize this legislation is critical to moving the Nation ahead. It is essential for the economy. It is essential for enhancing the quality of life. People are spending hours trying to get to and from work and we need to help address that issue. Seniors, young people, and the disabled need these various forms of transportation in order to live their lives. I strongly commend this legislation to my colleagues. A great deal of work has gone into it by many Members of this body. I think it is very important that we move this legislation forward and over the next few days to come, I hope we will be able to accomplish that and put into place this extremely important legislation.

Actually, in one of the statements of the majority leader he indicated he

thought this might well be the most important legislation to be considered by this body in this session of the Congress. I do not think that is an overstatement and I again commend this legislation to my colleagues. I thank Chairman SHELBY for the very productive, positive, and cooperative way in which he worked on this legislation and I join with him in commending Chairman INHOFE and Ranking Member JEFFORDS for the very fine work that was done in the Environment and Public Works Committee and Chairman GRASSLEY and Ranking Member BAUCUS for their efforts in the Finance Committee that, in effect, developed a full package that will make this legislation work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I appreciate the comments the Senator made. I know it is a very difficult area to deal in, but I think it is also interesting. When we look at the chairman, the ranking member, and then the chairman of the subcommittee and the ranking member of the subcommittee, there is Alabama, Maryland, Colorado, Rhode Island. There is a huge diversity. Most people think that geographically only certain parts of the country have an interest in transit. It is not true at all because there is equal enthusiasm. I am quite sure, knowing all four personalities and the areas they represent, they spent a long time putting this together, coming up with the successes they did achieve.

I would like to go back and review a couple of subjects we have talked about, but, first, I understand that perhaps Senator CARPER was wanting to seek recognition.

Mr. CARPER. Mr. Chairman, when it is appropriate, I will welcome the opportunity to speak for maybe 5 to 10 minutes on the bill.

Mr. INHOFE. The Senator may have longer than that if he wishes, and then I would want to reclaim the floor at the conclusion.

The PRESIDING OFFICER (Mr. TALENT). The Senator from Oklahoma yields the floor. The Senator from Delaware.

Mr. CARPER. Mr. President, I join my colleague, Senator SARBANES, in voicing my thanks for the work that has been done on the legislation before us today, and certainly to Senator INHOFE and his staff and Senator JEFFORDS and his staff.

As a member of the Senate Banking Committee, it has really been a pleasure for me these last 12 months to work with our new chairman—well, not so new chairman—Senator SHELBY and our ranking member, former chairman, Senator SARBANES, as we have attempted to craft any number of pieces of legislation. Last year, the Fair Credit Reporting Act, which I described yesterday, with Senator SHELBY, was just a model in the way we should be creating legislation in a badly divided Congress these days.

I don't know if the bill before us is going to be held out as a model for crafting legislation, but my hope is the product is going to be a good one for us and for our country.

I would like to speak for a few minutes about the transit provisions of this bill and then to talk a bit about our support as a nation for rail transportation and whether or not we have provided the right support and sense of priority for rail, be it freight rail or passenger rail.

Let's go back to the 1970s when something called the Urban Mass Transit Administration was created. We talk about legislation. We didn't have ISTEA; we didn't have TEA–21; we had a highway bill. Every several years the Congress would pass a highway bill. Even after the Urban Mass Transit Administration was created, we would pass in the Congress from time to time a highway bill.

In due course, the Urban Mass Transit Administration became the Federal Transit Administration. Somewhere I believe in the 1980s, the Federal Transit Administration funding was joined with the highway bill to become a transportation bill and we began taking money. Today I think it is a little less than 3 cents for every gallon of gasoline that is sold that will be allocated to the Federal Transit Administration to support mass transit services, including buses, including rail and a variety of other transit services.

With respect to the transit provisions of this bill, I think they represent our growing awareness that while roads and bridges and highways are important and we still love our cars in this country—cars, trucks, and vans—more and more people are using transit. It is a good thing they are. With the kind of congestion we have on our highways, with the kind of dependence on foreign oil and the kind of problems with air pollution, it certainly makes sense to have people get out of the cars, trucks, and vans to use transit to go to work or go shop or go to a ball game or any variety of other purposes.

I would like us to think of our transportation system in this country holistically for just a moment. It includes our highways, our roads, our bridges. It also includes transit. Last year we spent a fair amount of time reauthorizing the Federal Aviation Administration. In doing so, a variety of related programs, including the airport improvement program, were reauthorized. You may recall we fund aviation improvements, and particularly airport improvements, from a variety of user fees and some general fund moneys.

Last year we focused on aviation and how to improve our aviation component of our transportation system. This week we are focusing on highways and roads. Today we are focusing a bit on transit.

Mr. KENNEDY. Will the Senator yield for a consent request? I ask unanimous consent to be able to proceed after the Senator from Delaware finishes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CARPER. At a day and age in which some 16 percent of our freight in this country is shipped by rail, all told over 40 percent of our total ton miles of intercity freight go by rail, we have not yet seen fit to say the Federal Government should have some interest, more than just a passing interest, in helping to support, to nurture the rail component of our transportation system.

Later, probably not this week but I suspect next week, we will have the opportunity to consider that question: What kind of attention, what kind of support should we in the Congress and in this country be providing for freight rail service? What kind of support should we be providing in this country for passenger rail service?

Amtrak has just concluded a year where they had the highest ridership in the history of the company. More than 24 million people rode intercity passenger trains, and they had the highest revenue, I believe, for any year in their history as well.

We spend a whole lot of time from year to year in this body talking about passenger rail service and Amtrak. We really don't focus much on freight rail. I would have us keep in mind, in a day and age where we are using some 55 percent of the oil we use to run our cars, trucks, and vans, 55 percent of it comes from foreign sources.

You can take 1 ton of freight, put it on a train here in Washington, DC, and take it up to Boston, MA, and you use 1 gallon of diesel fuel. Let me say that again. You take 1 ton of freight, put it on a freight train here in Washington, DC, take it up the Northeast corridor to Boston, MA, and that train will use 1 gallon of diesel fuel to move a ton of freight by rail.

As Governor of Delaware, I was involved a whole lot in trying to improve our highways, our roads, our bridges. There has been a lot of State money and, frankly, a good deal of Federal money. We are always grateful for that partnership. We invest a considerable amount of money in transit services. We invest State money in airports along with Federal money.

We also invested State money in rail transportation projects. We did not have as a partner in those rail transportation projects the Federal Government. However, if it were a highway project, for every 20 cents we put up, the Federal Government would put up 80 cents to match. If we had the opportunity to choose between projects where we were getting an 80–20 match, an 80-cent match for our 20 cents on a highway project, and we had the option of putting our money and no Federal money in a rail project, the funding formula just automatically skewed our decisionmaking.

We may have had a rail project that made a whole lot more sense for our State, got a whole lot better bang for

the buck than the highway project, but we were inclined and encouraged to use the money for the highway project because of a far better return, 80 to 20 versus nothing for our 100 cents.

What I think some of us will be really asked to think about next week is whether it makes sense to say the Federal Government should be at least a modest partner in encouraging the utilization of freight rail—greater utilization of freight rail. Today, the role is almost zero.

I believe we can do better than that. There are a whole lot of different approaches, different ideas and thoughts about creating an entity that would issue bonds. The interest on those bonds would be paid for by the Federal Government through tax credits. The entity issuing those bonds would be essentially paid. There has been discussion of adding an extra penny or so to the Federal gas tax and using those funds to support rail in some context.

I know when I served on the impact board—and former Governor Tommy Thompson preceded me—he and I both suggested an extra half cent or so to the gas tax to provide additional money for capital investments for infrastructure. We thought that made sense.

We may be asking our colleagues next week to look at an approach that suggests maybe a source of funding through a gasoline tax. I don't think creating an entity to issue new debt is the answer, at least not now—but to look for some source of funding that would provide some money for the next 6 years to States that have identified good rail projects, freight rail, or even passenger rail, which makes sense for those States; if they are willing to put up their money in order to match moneys from a Federal grant through the U.S. Department of Transportation, I think that is an idea that may not have had a lot of merit several years ago.

But, when you travel the highways around here or Delaware or Vermont or Maryland, I suspect even some places in Oklahoma, Missouri, Massachusetts, we see congestion on our roads the likes of which we have not seen in our lifetimes. When you travel to airports, whether it is in Philadelphia, or BWI, or other places around the country, the kind of congestion we see is congestion I have never seen in my lifetime, and the kinds of delays we are facing I have never seen in my lifetime.

When I got out of the Navy in 1973 and got off active duty and moved from California to Delaware, about 30 percent of the oil used in Delaware back then in this country that year was oil we got from overseas.

When we can move a ton of freight from Washington, DC to Boston on a freight train and use one gallon of diesel, that certainly says to me there are some lessons for fuel economy in this day and age that we ought to pay attention to.

Senator JEFFORDS has provided great leadership with respect to clean air issues. We are wrestling and wrangling before the committee on what is the right approach. We have seen improvements in certain aspects of air quality. In the Northeast, we still have huge problems with respect to smog and nitrogen oxide; great problems with respect to mercury. I believe others here will agree to disagree that global warming is a growing concern. But in that kind of environment, the notion that we as a nation should be interested in fostering and encouraging a greater dependence on rail—freight and passenger—to move people and to move goods is I think the right notion.

I want to close by going back to where I started.

Again, we worked a whole lot last year on aviation. This week we are working on highways, roads, and bridges, and that certainly is appropriate. During today's debate, hopefully we will introduce transit into the fray. That is another important component of our transportation system that should get special attention. I don't know how long I am going to be in the Senate. I hope I will be here for a while. But I am going to keep reminding my colleagues that rail deserves a place at the table. If we provide that place, without even providing a huge amount of money, I think we are going to find our country and our respective States are well served by that attention.

I thank the Senator very much for yielding the time.

The PRESIDING OFFICER (Mr. BUNNING). Under the previous order, the Senator from Massachusetts is recognized.

Mr. INHOFE. Mr. President, will the Senator yield?

Mr. KENNEDY. I am happy to yield without losing the right to the floor.

Mr. INHOFE. I yielded to the Senator from Delaware at his request, and I asked that I get the floor when he finished. I want to explain to the Senator why I wanted to get the floor back. We are on the transit section. The chairman of the subcommittee, Senator ALLARD, has been waiting to be heard on that. I only inquire about how long the Senator will be until we regain the floor.

Mr. KENNEDY. It is a relevant point. If the Senator is here and wants to make a brief statement on it, I would be glad to yield now if I have the right to follow.

Mr. INHOFE. How much time does the Senator think he will require?

Mr. KENNEDY. Probably 20 minutes.

Mr. INHOFE. I thank the Senator.

Mr. KENNEDY. If he is here on the relevant part, I would be glad to wait. That is an enormously important sector of it. I intend to speak very briefly about it, but I don't intend to be longer than that.

Mr. INHOFE. I thank the Senator.

Mr. KENNEDY. Mr. President, I thank Chairman SHELBY and Senator SARBANES for their bold transit proposal that is before us. Throughout this process, they have been resolute in their defense of mass transit and the result is the proposal that benefits cities across this country. Simply put, mass transit, subways, commuter rail, and rapid transit is the lifeblood of metropolitan economies. We cannot expect our cities to remain the enormous economic engines they are today unless we make the critical investments.

The U.S. Conference of Mayors recently released a study that shows U.S. metropolitan areas have accounted for 87 percent of the Nation's economic growth and have generated over 85 percent of the economic output, labor, income, and jobs over the past 10 years. Eighty-seven percent of the Nation's economic growth was from the cities.

When we consider statistics like these, I think my colleagues will agree this Senate should invest in transportation resources in a manner that benefits America's metropolitan areas.

I am particularly happy to report that the package crafted by Senators SHELBY and SARBANES does just that, and all of us in the Senate are truly in their debt.

On another matter, I strongly support the Public Safety Employer and Employee Cooperation Act amendment. I commend my colleague of the HELP Committee, Chairman JUDD GREGG, for sponsoring the Public Safety Employer and Employee Cooperation Act, and for offering it as an amendment on this bill. I am a cosponsor on this bill which was reported out of the committee last fall. We are joined by 25 other sponsors of the Senate, including a number of our Republican colleagues.

Our public safety workers play a tremendous role in protecting our communities and families. I remember the extraordinary courage we saw among those rescue workers, among those firefighters, and among those police officers on September 11 in 2001. They entered those burning buildings, risking their lives, and after the buildings fell, they raised an American flag amid the ruins. That image captures perfectly what these brave men and women do. They not only protect homes and our lives, they represent the very best that is in us. The courage and the sacrifice of ordinary working Americans is our Nation's greatest strength.

We were prepared to call on these men and women on 9/11, and they answered the call. It is time to honor them—to honor their service and their sacrifice—by giving them collective bargaining rights.

For more than 60 years, collective bargaining has enabled labor and management to work together to improve job conditions and to increase productivity. These productive relationships also help workers to obtain better wages, better health benefits and pension benefits.

Collective bargaining in the public sector, once controversial, is now widely accepted. It has been common at

least since 1962 when President Kennedy signed an executive order granting these basic rights to Federal employees. Indeed, over 30 States already recognize bargaining rights for these employees. Unfortunately, public safety employees in many States still lack the right to bargain collectively. They lack a voice on the job. By giving them this voice, we will not only help these brave workers, but we will also increase the safety and effectiveness of our public services.

This amendment guarantees the fundamental rights necessary for collective bargaining—the right to form and join a union, the right to bargain over working conditions, and the right to legally enforceable contracts.

The benefits of this legislation are clear and compelling. First, this amendment will improve public safety. Our firefighters and police officers are better equipped than anyone else to know how to improve our public safety.

As the former president of the Fraternal Order of Police testified at a congressional hearing in 2000: ''Public safety service is delivered by rank-and-file officers. Therefore, it is their observations and experience which will best refine the delivery of service. To exclude them from having any input relating to their job, particularly when their lives are on the line, is not only unfair to the officers, but the public they are sworn to protect.''

Unfortunately, many public safety officers do not have this right today. They risk their jobs when they speak out about working conditions that are a danger to themselves and the public. Take, for example, the firefighters in Springdale, Arkansas, who testified to the city council about the need for better equipment in staffing. He was fired for insubordination. Or the firefighters in Odessa, Texas, who set up a Web site and newsletter publicizing the fire department's failure to provide them protective masks in the case of a chemical attack and were interrogated and disciplined for their actions.

There are too many examples like this of public safety workers who see inadequate staffing and equipment, placing themselves and the public at risk, who do not have the right to bargain to change the problems in a contract. Our public safety employees know best what is needed to keep us safe. Under this amendment they would have the right to negotiate these workplace conditions with cities and towns they serve. This will lead to greater cooperation, improved labor-management relations, and better service.

One example of this success can be found right here with the Capitol Police. When the Capitol Police were granted collective bargaining rights, their contract provided for a joint labor-management relations committee to review police practices, equipment, and officers' safety. As a result of these discussions, the United States Capitol Police were given greater access to body armor and upgraded weapons. Over a year before September 11, 2001, our officers were already aware of the need for increased security in the Capitol buildings, something we are reminded of every day, particularly this week.

Collective bargaining is also more cost effective. A study by the International Association of Firefighters shows some States and municipalities that have given firefighters the right to discuss workplace issues have lower fire department budgets than States without such laws.

Not only would collective bargaining benefit the public, it would help these employees who do so much to protect us. Every year more than 15,000 police officers and 75,000 firefighters are injured on the job. On average, 160 police officers and nearly 100 firefighters die in the line of duty each year. This amendment gives these workers the opportunity to discuss the on-the-job safety concerns with the management. It would also give workers a chance to improve their wages and benefits.

Public safety employees without collective bargaining rights are often paid less than their representative counterparts. In some of these States, it is not unheard of for firefighters to earn less than $18,400, the Federal poverty level for a family of four. Many of these workers have to pay for their own health insurance. This costs thousands of dollars a year they cannot afford.

Some of my colleagues have previously expressed concern that this legislation affects States rights and public safety. This amendment would preserve States rights. Each State would maintain and administer its own collective bargaining law. States would have the ability to decide how they want to provide the collective bargaining rights. Indeed, the majority of the States already meet the amendment's criteria.

This amendment also recognizes the importance of community security. I strongly believe our police officers and firefighters will always act to protect the safety of the public first. However, in order to ensure there is no possible risk to this, this amendment expressly prohibits the right to strike. My colleagues should, therefore, have no concern that this would in any way compromise the safety of our cities and our neighborhoods.

The Federal Government recognized the right to collective bargaining more than 60 years ago. Public safety workers are one of the largest sectors of the workplace who do not yet have that basic right. Our Nation's police officers, firefighters, and emergency rescue workers have earned that right. I urge my colleagues to give them that right by supporting this amendment.

MEDICARE

Mr. President, on another matter, the administration is robbing the Medicare Program to finance the Bush reelection campaign. That is wrong. Today, we call on the Comptroller General of the United States to investigate the legality, propriety, and accuracy of this unprecedented and improper use of taxpayers' money. The Washington Post describes the ads the Bush administration is running as designed to build public support for the new Medicare prescription drug law, seeking to counteract Democratic criticism that changes to the program will harm older Americans.

The $12.6 million of Medicare money the Bush administration will spend on these ads is on top of the $10 million they plan to spend on a deceptive mailing to all 40 million Medicare beneficiaries touting the new law. There is no purpose for these advertisements except to convince senior citizens the Medicare bill is good for them. They are nothing more than propaganda for the Bush reelection campaign, using $23 million of senior citizens' own Medicare money.

The merits of the new law are a legitimate subject for political debate. Democrats intend to keep talking about this issue all the way to November. We will be fighting to rewrite this deeply flawed and destructive bill. President Bush will be claiming credit for it, defending it, as he did in the State of the Union Message. He is entitled to do that. But he is not entitled to use senior citizens' own money, the taxpayers' own money, to sell this bill like a car or a cake of soap so the President can improve his fading chances of reelection.

For those who have not seen the advertisement, it features actors pretending to be Medicare beneficiaries. Every question the actors ask is answered with a variant of a simple-minded slogan which is shown throughout the advertisement: Same Medicare, more benefits.

The advertising campaign is managed—listen to this—the advertising campaign is managed by the same firm that works for the Bush reelection campaign and for the drug industry. If there is anyone who thinks the sole purpose of these ads is not to promote President Bush's reelection, they must come from another planet, maybe Mars.

There is a lot the ads and mailings do not tell the senior citizens because the Bush administration understandably does not want them to know the facts of the new law. Its bland assurance that the elderly can keep their Medicare does not tell them the administration's own estimates project over $50 billion in excess payments to Medicare HMOs in order to prevent Medicare from competing on a level playing field and ultimately privatizing the whole program.

It does not tell them up to 6 million senior citizens will be forced into a vast demonstration program that will require them to pay higher premiums if they want to keep their Medicare.

It does not tell them if the insurance company offering the drug benefit in their area charges a premium that is too high or does not cover the drugs

doctors prescribe, the only way they can get the drug benefit is to leave regular Medicare and join an HMO or other private insurance plan. It does not tell them that.

There is a lot more this ad leaves out. It does not tell senior citizens the bill has provided over $100 billion in windfall profits for the pharmaceutical companies and that the Government is prohibited from negotiating better prices for senior citizens.

It does not tell them almost 3 million senior citizens will lose good retirement coverage and be forced into the inadequate Government program.

It does not tell them if they are poor and on Medicaid they will have to pay more for drugs they need and have less access to the drugs their doctor prescribes.

It does not tell them if they wait a year or two and see how the program turns out before they join it, they have to pay higher premiums. In fact, it does not even tell them they will have to pay a premium.

It does not tell them they are prohibited from using their own money to buy supplemental coverage to fill in the gaps in the inadequate Medicare benefit.

It does not tell senior citizens the Bush administration misrepresented to their own party and to the American people the costs of the bill.

The more senior citizens learn about this program, the angrier they become. I predict when they learn this misleading ad, designed to help the President's reelection campaign, is paid for by their own Medicare money, they are going to be even angrier.

UNEMPLOYMENT

Finally, I bring to the attention of the Senate an excellent report, the Economic Policy Institute report that talks about the wage and salary income for workers in this country. It is an ominous report and is something all Members who have been traveling around our States certainly have found out in talking to any of the workers.

I ask unanimous consent to have the document printed.

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

[From the Economic Policy Institute Economic Snapshots, Feb. 4, 2004]

WAGE AND SALARY INCOME YET TO SHARE IN GROWTH

The Department of Commerce's advance release on gross domestic product (GDP) estimated that the U.S. economy grew 4% in the last quarter of 2003. This is a solid growth number, although well off the extraordinarily high (and unsustainable) 8.2% rate of the third quarter. However, the rise in GDP has not yet translated into higher wages and salaries for many U.S. workers.

Despite solid GDP growth in the second half of 2003, many Americans continue to rate addressing the economy and jobs as the nation's highest priority. One possible reason for this continued anxiety in the face of rising GDP is shown in the figure below: the current recovery remains the single worst on record in terms of generating the real (inflation-adjusted) growth in wages and salary income that is the economic lifeblood of most American families.

In the 25 months since the recession ended, total wage and salary income is up only 0.4%. It should be emphasized that this is growth after the recession ended and does not include income losses incurred while the economy was contracting. This is the slowest wage and salary growth of any recession since 1959, the first year in which monthly data on total wage and salary income is consistently available.

Wage and salary income after the previous five recessions was an average of 9.4% higher by this point in the recovery. Prior to this recovery, the worst post-recession spell for wage and salary growth was the last jobless recovery of the early 1990s, which still saw wage and salary income rising nine times faster (3.6%) than in the past 25 months. The current slow growth of wages and salaries means that many U.S. workers are not reaping the benefits of the recent GDP growth.

Mr. KENNEDY. This is the first time in over 50 years that long-term joblessness has reached such high rates. Mr. President, 22.3 percent of the unemployed have been out of work for more than 6 months. Without workers being offered any Federal job benefits, every week 90,000 workers are running out of unemployment benefits.

In the Senate, we have tried more than a dozen times to extend the unemployment benefits to ensure that those workers can continue to support their families while they look for a job. More than a dozen times our Republican colleagues have said no.

The White House has been silent on the issue claiming ''mission accomplished'' on the economy while millions of Americans remain out of work. The Bush economy continues to create only one job for every three people out of work.

But yesterday we finally had some good news. Our colleagues in the House recognized the unemployment crisis and voted, 227 to 179—including 39 Republicans—to reinstate the Federal unemployment benefits for 6 months. Workers have paid into the unemployment insurance trust fund. The trust fund is now $17 billion. The extension would cost $6 billion to $7 billion. This is a matter of fairness.

In December, only 1,000 new jobs were created. Tomorrow we will find out how many jobs were created in January. I hope it is good news. But I can assure you right now, it will not be enough to restore the 2.4 million jobs lost under President Bush or enough to ensure that every worker who wants a job can have one.

That is why we need to reinstate the unemployment benefits. Americans are suffering. They are struggling to pay their mortgages and keep food on their families' tables.

If the House of Representatives can accept this, in a bipartisan way, with 39 Republicans, you would think we would be able to accept it and not have it continually blocked.

I will just show a chart. This chart shows the average number of out-of-work Americans running out of unemployment benefits without finding a job from 1973 to 2003. For 30 years it has averaged 151,000. In January of this year, 375,000. Our Republican friends refuse—absolutely refuse—to permit the continued help and assistance which those workers have paid into the unemployment compensation fund, which today is $17 billion in surplus.

The House of Representatives has accepted it. Thirty-nine Republicans went along with it. I wait, as many of our colleagues, for the amendment that will be offered by our friend and colleague, a leader on this issue, Senator CANTWELL, who will offer that amendment; and it will give an opportunity for the Senate to address this issue.

But I also point out—I see my leader in the Chamber—the Economic Policy Institute, on February 4, issued a presentation of which I cite a chart entitled ''Real growth in wages and salaries, 25 months since recession's end.'' They go back to 1961, 1970, 1975, 1982, 1991, and 2001. In the 25 months since the recession ended, wages and salaries have only grown 0.4 percent. It is the lowest in the history of any economic recovery that has ever been recorded.

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

Mr. KENNEDY. I am glad to yield.

Mr. REID. I had to step off the floor, but I did come back and heard part of the Senator's statement regarding Medicare.

It is true, is it not, that the taxpayers of this country are paying for political advertisements to talk about how good the bad Medicare package is? Is that true?

Mr. KENNEDY. Well, the Senator is absolutely correct. A total of $23 million will be money that is paid in for our seniors. It is taking that money that was to be used for the protection of our seniors, and it says $12 million—$6 million will be spent on the television. That is on top of the $10 million that will be done for a mailing to all 40 million Medicare beneficiaries. The ad house that is handling this is in charge of the Bush administration's reelection campaign.

Mr. REID. May I ask another question.

Mr. KENNEDY. Please.

Mr. REID. So the Senator is saying, not only are taxpayers' dollars being spent to promote a bad Medicare program, but that the advertising is being done by the President's own reelection media team?

Mr. KENNEDY. The Senator is absolutely right. I know the Senator is in disbelief of the gall the administration would have to take $23 million out of Medicare to use it with their own ad agency for mailings to 40 million seniors and to use on the airwaves in support of a bill and in misrepresenting the bill itself.

I took a moment of time to show how the ad itself is so misrepresentative of what is in the bill. But the Senator is correct.

Mr. REID. Will the Senator yield for one other question?

Mr. KENNEDY. Yes.

Mr. REID. Is it also true that in the mailings and the television they do not bother to tell what is going to happen after the election that takes place in November with Medicare? Because I believe—and think the Senator from Massachusetts believes—most of the bad stuff happening in this bill comes after the election. Is that true?

Mr. KENNEDY. The Senator is quite correct, although he is not entirely correct. The bonuses that are going to the HMOs—some $12 billion now will go to the HMOs to treat any person who would qualify for Medicare. They will get a 25-percent bonus over Medicare with direct subsidies, which is not a level playing field, of which we hear so much from the other side, but direct subsidies. Those subsidies start in March of this year.

So you are right, the benefits are way down the road. The benefits that will affect the poorest of the poor are going to be after 2006. But the payoffs, the bonuses to the HMOs of $12 billion will start in March. In fact, the Administration's own internal estimates, that were kept secret from the American people, and have just been released, indicate that the payoffs will be more than $50 billion.

So I thank the Senator.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I appreciate very much the Senator from Massachusetts being sensitive to the chairman of the Subcommittee on Transit who wants to come down to the floor. He will be here shortly.

Mr. President, what I thought I would do is continue to go through—in these moments where there is a little bit of a lull—this section-by-section analysis, as arduous as it may be to some people. But I think we need to have it in the RECORD so everybody has an understanding of not the hours, not the days, but the more than an entire year we have worked very carefully with the Senator from Nevada and the Senator from Vermont in coming up with the agreements and the compromises we have.

As we had said before, the goals of the reauthorization of TEA–21—which for the next 6 years we refer to as SAFETEA—have been to increase the rate of return to donor States. This is something of which certainly the Presiding Officer is fully aware. It is something we are all sensitive to.

My State of Oklahoma, for example, was down in the 70 percent range prior to ISTEA. Then with ISTEA and TEA–21 we crept up to 90.5 percent. This bill will take us up so every State will be guaranteed to get back 95 percent. I think that goes a long way. Some people who are a bit sensitive to the plight of donor States believe that getting to 95 percent pretty much resolves the problem.

That was one of the points we dealt with, and that took a long time on which to get an agreement. At the same time we did that, we wanted to make sure we were not negatively impacting donee States. We hear people come down and complain about the formula approach, their State perhaps is not getting what they should be getting. Then we hear later on a donee State will come down. We have to recognize, if we don't have floors and ceilings and we take care of all the needs of the donor States, it is going to affect the others.

For the fast growing States, that is a consideration in the formula. We have never done this before. For those States that are growing very fast, we had to put in a ceiling, so we bumped the ceiling; otherwise, there wouldn't be anything for the other States.

We have to keep in mind that the three largest, fast growing States are consuming in this bill 26 percent of the growth. Consequently, as people have come to the floor, if you try to look at that and say, yes, we are sensitive to this, we must do something about the fast growing State, and yet at the same time you have one of the States such as New York or Pennsylvania that would be negatively impacted by the same thing. So this was a compromise all the way through.

Streamlining is something we tried to address. I was actively involved in the other body during the development of ISTEA in 1991 and then again in TEA–21 in 1998 on this side. We were not successful in doing it. In other words, there are things we can do to streamline some of the regulations we have to deal with. Many of those are environmental regulations where we can get that taken care of first, and we have provisions in this legislation that will do that and end up getting a lot more for our dollars.

The reason we are calling this SAFETEA is that right now we have some 43,000 deaths on the highway. We are looking now at a trend line that is going the wrong way. So it is time to address that. We even have the name SAFETEA. That is very appropriate.

Freight movement: We haven't really spent a long time on addressing these things. Nonetheless, this bill does do it. The Federal Highway System is a key component to continued economic growth in this country. We have talked about the positive effect of this bill when we get it passed and get by these parliamentary obstacles. Keep in mind, it bothers me a little bit that we have obstacles from perhaps 5 or 6 people when we had 75 votes to move on and invoke cloture.

Remember when we saw in one of the publications on the Hill the ''Men Working'' sign, and then, superimposed in the middle of that, ''Men Not Working.'' That is a sign that we still have a problem. We have an economy that is on the rebound now, but jobs are lingering behind.

There is no program out there that is more of a significant jobs program than this bill. The IPAM provisions in the legislation will allow those projects which are immediately ready to be completed. I know the Senator from Oregon has been very concerned about how quickly we can get in there and get some of these jobs going. That is why that provision is in there, so you can move immediately to those projects that have been approved without going through a long and arduous process.

That is the major concern the American people have with our not getting something done. There is a lag behind highway construction and getting the job done, we all know that.

When you talk about deficient bridges, of all 50 States, my State is No. 1. People are very sensitive to that. But they also recognize that even when we pass this, it is going to take a while to get this done.

What they are aware of is, you pass this and immediately it is going to have a very positive impact on the job market. In calculating job opportunities, it is about quadruple the number of jobs that would be corrected with this legislation. The reason is this: If a guy has a job, he is out building a road; he is also buying goods and services. The manufacturing jobs are improving. We are talking about a huge issue. There is nothing we can do that would more quickly take care of this problem.

The old bills had what was called a minimum guarantee. TEA–21 had a minimum guarantee. We all remember. We remember that formula, the 1104 formula. As you looked at the formula, each State had a percentage of the total amount, and that was what was called the formula. But politically speaking, once you get up to the 60 votes you need, it does not make any difference what they did. Consequently, it didn't have any of the provisions in there that would try to do the most good, build the best roads, and take care of the problems in the States where they are the most serious. We have done away with that.

It would have been easier to just go ahead with that because everybody understands that and you get 60 people happy and you have a bill. But we didn't want to do that because there are a lot of the categories of people in the States that need to be taken care of.

One of the problems we have with the very fast growing States and the large States is that while we are going to end up in 2009, at the end of this 6-year period, with 95 percent in terms of the donor States, the fast growing States, the large States will not reach that until 2009. I regret that is necessary, but frankly there is no other way to make this happen. So what we did was to put the formula into effect and let the formula work.

I have been going through and outlining the various sections of the bill. We have done it from the very beginning, section 1101, all the way up now to 1620.

Section 1620 is the Highway Stormwater Discharge Mitigation Program. As introduced, S. 1072 did address the issue of contaminated storm water runoff from highways. Specifically, it expanded the eligibility of storm water projects to be able to use a State's funds under the NHS program and extended the eligibility of storm water projects to mitigate runoff on existing Federal aid highways, ongoing reconstruction, rehabilitation, resurfacing, or restoration projects. An amendment was adopted to create a 2 percent set-aside from the Surface Transportation Program amounting to nearly $1 billion.

This is something about which I know a lot of Members have a concern. My position has always been that if a State wants to use a 2 percent, a State can do it. If you have a mandatory set-aside, it puts us all in the position of where not only do we not have a choice, no other State has either. When you add it up, that is a lot of money. You are talking about a billion dollars. That is something that is going to be dealt with, it is my understanding, by interested Members. We will have to debate that.

My concern is getting to the position where we can debate legitimate differences of opinion. And that was one on which our committee was divided right down the middle. The concern I have right now is we are not debating things where there is a legitimate difference of opinion or even things that are germane. I hope that we can get to a point where we can table all nongermane amendments. I don't think we are going to get there, but I would like to get there. If we did, that would resolve that problem.

There are legitimate issues to deal with, with amendments. Section 1701 is transportation systems management and operations. Despite the historic increase in highway investment following the enactment of TEA–21, operational performance has declined. For example, a trip that would have taken 25 minutes during the congested period in 1987 now takes an additional 5 minutes. What we are talking about here is we have more congestion. I have seen this congestion mount. I was in the other body for 8 years. I was on the Transportation Committee during that time. The committee structure in the other body is not the same as here. In the other body, all they deal with is transportation.

Over here, we have Environment and Public Works, so we have other issues with which to deal. But when I got to the Senate, a vice chairmanship of the subcommittee became available. That was clean air. We went through the clean air problems we had during the Browner administration in the EPA. A lot of the problems that came up in my State—in fact, with original proposals that came through, out of 77 counties in Oklahoma we would have had some 50 counties that would have been out of attainment. We worked on that and tried to get something done that would be successful.

But when we deal with this section 1701, we are saying that if you are out there taking a trip, going from one point to another, and because of congestion you have to stop and let your engine idle and let the truck idle, you are using up a lot of fuel unnecessarily, and we will quantify that in a moment in our discussion. No. 2, it is a time waste. So you have an air quality problem as well as a pollution problem. This bill makes several changes to improve the transportation system's management and operations, including the creation of a foundation for transportation systems management and operations. Through the provisions of this bill, transportation systems management and operations programs and projects are integrated into the capital planning and construction processes. States are given tools for reducing traffic delays caused by vehicle accidents and breakdowns on highways during peak traveling times. The bill encourages continued development and deployment of safety measures, notification systems to disseminate safety information on Federal aid highways to motorists and public safety agencies as needed. Examples may include traffic congestion, freight movement and conditions, amber alert, weather event emergency notifications, and border and homeland security notifications.

I have been informed there may be another Member who wants to speak for a specific period of time on an unrelated issue.

Mr. WYDEN. Will the Senator yield?

Mr. INHOFE. I will yield——

Mr. WYDEN. For a question?

Mr. INHOFE. Yes.

Mr. WYDEN. First, I express my appreciation to the chairman on the committee on which I sit. He has worked very closely with Senator SMITH and me, and we appreciate that. If it doesn't cause any great travail, I was interested in speaking for maybe 10 minutes on a health care issue. I see our friend from Colorado. Maybe something could be worked out among the three of us whenever the chairman has completed his remarks. I think at 1:30 the rule kicks in where you can address other issues. If something could be worked out, it would be helpful.

The PRESIDING OFFICER. The time is 1:49 when that rule kicks in.

Mr. INHOFE. Mr. President, I ask unanimous consent that the Senator from Oregon be recognized for up to 12 minutes on a subject of his choice and that Senator ALLARD be recognized immediately after that.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ALLARD. Mr. President, I wanted to understand where we were. The Senator is going to speak for 12 minutes and then I will be recognized for 10 minutes; is that correct?

The PRESIDING OFFICER. Yes.

THE MEND ACT

Mr. WYDEN. Mr. President, skyrocketing prescription drug bills are hitting senior citizens in this country like a wrecking ball. It seems to me it is critically important that the Congress move on a bipartisan basis to put in place aggressive cost containment measures that can best be achieved by making sure that the Medicare Program has real bargaining power, that the barriers are eliminated to bringing in drugs that are safe from other countries, and that seniors are in a position to compare prices, with real price disclosure in markets across the country.

Today I have introduced, along with the senior Senator from Maine, Ms. SNOWE, legislation that would do just that. I believe it is critically important for Congress to move on this legislation in the days ahead. If for no other reason, the legislation I introduced with Senator SNOWE should be priority business because of the developments in the last week.

In the last week, it has become clear that the prescription drug measure passed last year—a measure I voted for—will cost over $130 billion more than was originally anticipated. So I think there was a strong case for the cost containment measures that Senator SNOWE and I are advocating today even before the developments of the last week.

But on the basis of what we have learned in the last week, I don't see how you can logically argue that Medicare should not have the same authority to bargain for seniors who need those prescription drugs that Members of Congress benefit from because of the Federal Employees Health Benefits Program that goes to bat for us.

So I am hopeful that this bipartisan legislation—which I believe is the first significant bipartisan health reform bill this Congress—will be considered quickly. Certainly the developments of the last week have given, in my view, new impetus for this legislation.

Our legislation is called the MEND Act, the Medicare Enhancements for Needed Drugs Act. It attacks the high prices seniors are facing in four major ways:

First, it leverages the market share of tens of millions of seniors into real bargaining power.

Second, it breaks down the barriers to reimportation of lower cost drugs.

Third, it makes Congress a watchdog against unfair price spikes.

Fourth, it creates real incentives for seniors to get the best prices for their medicine.

I think colleagues understand, having been home over the last few weeks, that there is tremendous concern with respect to this legislation. There is confusion about what it stands for. I think we have all heard that. But at the top of the list of concerns seniors are bringing to us is the question of what is being done to rein in these costs. It seems to me that with an opportunity to address this in a bipartisan way, which is what I have done with Senator SNOWE—we have been at this now for 5 years—the Congress could come together.

Now, if that is not done, it seems to me that given the developments of the last week, and the legislation costing $100 billion-plus more than anybody anticipated, we are going to see the frustration mount not just with seniors but with taxpayers across the country.

I am going to be talking about this legislation more in the days ahead. I am very pleased that the Senator from Colorado was kind enough to give me the opportunity to speak for a few minutes in the Chamber today. I am very pleased that, with Senator SNOWE, we have a bipartisan, commonsense proposal that can help America's seniors receive the prescription drugs they need.

Our legislation will give seniors a powerful one-two punch to fight back against high prescription drug prices. It will help seniors save money on every prescription and give the new Medicare benefit even more buying power.

Under our bipartisan bill, the Secretary of Health and Human Services could fight on behalf of seniors for lower drug prices and individual Medicare plans would actually have incentives for negotiating prices comparable to the VA.

Seniors should not have to underwrite tax breaks for companies that try to keep affordable, reimported drugs out of their hands. Today, drug companies get a dollar-for-dollar tax writeoff on their advertising, advertising that is helping, in my view, to drive up the cost of prescription medicine. In the last year for which we have figures, direct-to-consumer advertising cost $2.5 billion.

What we say in our bipartisan legislation is if the drug companies say no to affordable reimported drugs for seniors, then they are going to have to say no to the tax breaks that are paid for with seniors' tax dollars.

I hope in this session of Congress we will see an effort on a bipartisan basis to improve on the legislation that was passed last year. I voted for that bill last year. I still have the welts on my back to show for it. But I also came to the floor at that time and said I think the Congress can do better in terms of cost containment, not by setting price controls, not by some big Government regime that has the Government interfering in various kinds of areas where there is no appropriate role. But I said there is no logical reason why Medicare shouldn't have the same bargaining power to get a good price for seniors the Federal employee plan has for Members of Congress. Now there is a bipartisan proposal before the Senate that will get seniors a fair shake using marketplace forces.

I hope in the remaining days of this session, legislation can be acted on favorably. Senator SNOWE and I have worked as a bipartisan team for 5 years now in an effort to try to get this prescription drug issue right.

At the top of our seniors' concerns today is the need for better cost containment. We can do it with marketplace forces. The Senate now has bipartisan legislation that will do just that. I hope my colleagues will support it.

Again, I express my thanks to Senator ALLARD and look forward to working with him on the transportation bill as well.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank my colleague from Oregon for his comments. I, too, look forward to working with him on these transportation issues. We worked together on a number of issues throughout our careers. I always look forward to the cooperation he is willing to share in a bipartisan way.

While we are passing out some ''atta boys,'' I want to again congratulate the chairman of the Environment and Public Works Committee for getting this bill to the floor. It was not easy. I know he worked all last year, and while most of us were on break, he was working hard trying to work out compromises so this legislation would be one of the first with which we would be dealing when we came back in for this particular session of the Congress.

Historically, transportation issues have not been partisan. Usually, it is approached in a bipartisan way. It is very complicated. Every State is affected differently. The bill has a highway transportation portion and a mass transit portion. Usually, there are some provisions, such as we saw this year, that come out of the Commerce Committee. The Finance Committee gets involved because there are some issues on how we are going to come up with the money that is required.

I also wish to compliment Chairman SHELBY. Chairman INHOFE is chairman of the Environment and Public Works Committee, and then we have Chairman SHELBY who is chairman of the Banking Committee. A major part of the mass transit provisions comes out of that committee. He has been working with the ranking member, Senator SARBANES. I am chairman of a subcommittee in the Banking Committee that deals with housing and transportation, so I have oversight over mass transit. I work with the ranking member, Senator REED of Rhode Island. They, too, spent a great deal of time working on this legislation, and I thank them for working in a bipartisan way to reach a consensus on this bill.

One of the issues we struggled with is how we are going to pay for what everybody wants in highway transportation and mass transit. It is something with which Congress has been struggling.

This bill came out of the Finance Committee, and they put in provisions. My concern is that we don't add to the deficit and we use those dollars that are available in the highway trust fund to finance transportation needs, particularly for highways.

The bill is a step in the right direction. It makes important steps in a number of areas. I come from a State that has experienced rapid growth. I know a lot of Members of the Senate who come from rural areas, particularly in the West and the South, have experienced similar growth rates in their particular States. So we all are challenged with the transportation problems that come with that rapid growth. One problem is mass transit.

Historically, most of the dollars in mass transit have gone to those States that have large metropolitan areas or directly to a large metropolitan area, such as New York, Los Angeles, or Chicago. But those of us who come from relatively small metropolitan areas but are showing a lot of growth have never had access to dollars that are required for us to begin to move forward with mass transit.

In the State of Colorado, Denver is our metropolitan area. It was very difficult at one point to access the dollars to start mass transit systems. There were provisions put in place when we had Chairman Alfonse D'Amato from New York. I worked with him to try and put together a formula for mass transit where the smaller States could begin to participate in some of the mass transit dollars. That originally got put in place when Alfonse D'Amato, who was from New York, was chairman of the committee. Like I said at the time when we were working with Chairman D'Amato, we don't want to take all the money for small States, but I think when we have more than 90 percent of the dollars in mass transit going just to 11 cities, that is not a good balance either. So we needed to work out a formula.

We worked out a formula where the smaller growing metropolitan areas in this country would have some additional access to mass transit money.

We continue to work on that provision in this bill. We are beginning to recognize the growth and the needs in many other communities throughout the United States and working to give them flexibility to approach their transportation problems with different perspectives. We give them as many alternatives as they possibly can select in trying to meet their transportation needs.

One area is using buses, what we call rapid transit buses. These are buses that have dedicated lanes on highways. In some areas, it is cheaper to put down roads and highways than it is to build rail. They use that and then use buses instead of mass transit. It has the advantage of additional flexibility because the bus doesn't have to stop at one particular station. I know my State of Colorado is looking at this as an alternative.

We have money in the section that came out of Banking to provide additional flexibility to the States and local communities so they can look at these various alternatives as to what they can afford. There is no getting around it; when you start putting in a fixed rail system, they are very expensive.

I am happy to report in my State of Colorado, we have a major construction project combining expanding highways with mass transit. That particular project has been under budget and is ahead of schedule. As a result of that, the State is developing a good reputation in that regard. We have tried to put incentives in this legislation that says to communities throughout the country if you begin to take on these projects, we have incentives where you can work on the project, and if you are responsible with the taxpayers' dollars and you are ahead of schedule and under budget, this is all good news, so we want to encourage that type of behavior.

That is so much of what we have been trying to accomplish in the mass transit section of the bill.

Highways, obviously, are important as far as rural transportation is concerned but also is bus service. In some isolated areas of this country, there are elderly people, and many rural communities are disproportionately impacted by again rural populations. So they need to have some other alternatives of being able to get to their doctor or being able to get down and around in their communities to take care of their vital needs. So we have provided some programs that begin to provide bus service for the rural communities.

Overall, I think there has been a little bit of shift, if one looks at this transportation bill, from large States to the smaller States and giving the smaller States some flexibility as far as the dollars. That is good because that is kind of what is happening with the population. There is a lot of population change. People are moving from the larger communities and going out into the smaller communities, and sometimes it has to do with the quality of life. They are going out in the smaller communities because they have smaller classes in the schools. They like the rural living. They like easier access without having to deal with traffic problems.

We need to keep this in mind. So there is a provision in there to help take care of some of these big issues. We figured out that about 40 percent of the counties in this country do not have any transit at all and they are looking at some ways of trying to meet the needs of their local citizens.

Overall, this package has some good in it. We just need to work out how we are going to pay for all of it.

The other thing I would mention is, the private sector plays a key role in all of this. We sort of leaned on the private sector to help provide the expertise, and we want to be sure they have an opportunity to get into public-private partnerships because it can benefit all parties. Many times if it can be opened to a free market approach, it holds down the cost of the project. If projects develop into monopolies where one company, one group of employees, or one community has such control, then we do not have the competition out there to hold down the cost of the project.

I am one who ordinarily believes that if costs for a project are to be held down, competition is the way to do it. Rules and regulations are passed, as well as having price controls. Basically, it is going to be competition that best serves the customers, whatever that transit project would happen to be, and also would be a process where we do not have an overburdensome bureaucracy which in itself does a lot to add to the cost of the project because of so much oversight.

So it is kind of a balance between where is the proper level of regulation so they can assure that things are done right but on the other hand hold down on the regulations so there are not unnecessary bureaucratic delays.

This is sort of a broad-brushed approach to our transportation needs. We began to recognize that there are lots of ways people can travel, and I think we have done that in this particular bill.

I want to talk a little bit more about my own State of Colorado and what is happening. If we look at the highway transportation funding formula, Colorado does well as far as the formula is concerned. This kind of chart sort of illustrates that. If we look at TEA–21, the 6-year average is $335 million available for Colorado in the previous 6 years, per year. TEA–21 is the highway transportation bill that was passed and its funding ended in 2003. Now we are on 2004. This is what we call SAFETEA. If we look at the funding there, we have $423 million in 2004 for Colorado. In 2008, it goes up to $505 million, but in the last year we have a real balloon that goes up to $603. Some people say: I do not know if it is going to be there.

Well, it is out there quite a ways, 6 years. In the last transportation bill we had, it was available for the State of Colorado. In the last transportation bill, they had flexibility that the States could use. There were some rather unique happenings in the Denver metropolitan area in trying to meet the transportation needs of the State as well as that metropolitan area. So for the State of Colorado it is about a 46-percent increase. All total, we are talking about 934.3 million new dollars over and above what was provided in TEA–21. If we want to spill those over into jobs, it is estimated that could create as much as 44,300 new job opportunities in the State of Colorado. So there is no doubt that if the infrastructure is worked on and it is done the right way, it can create a lot of opportunity in one's State. Certainly in the State of Colorado it is creating a lot of opportunity for us.

Now, when we talk about transportation issues in my State, there are a lot of things with which the local communities have to deal. Obviously, there are those who have to commute to work who want to get to work as fast as possible. There are those who say, look, we have air pollution problems and as a result of that we want to restrict the amount of driving that goes on. So maybe mass transit is one of the ways to do that.

The first large mass transit line that we put in the State of Colorado, in the Denver metro area, out toward what we would refer to as the southwest corridor, has helped hold down our air pollution. People are using that.

Some people say we spent a lot of money on mass transit but it does not get used. Well, at least as far as the Denver metro area, it is being used. In fact, it is being used to the point where it has exceeded the amount of revenue that anybody anticipated. The usage is much higher. There is so much demand to get on the train that one of the things that has become an issue is parking, where are people going to park around the various stations in order to be able to take the train to work.

So now this has been moved a step further. With the success of that train, they are taking the money and saying, OK, now we can expand it out to the major project they are doing now, which is between two major business centers. As far as Denver is concerned, it is going to help the economy a lot. So when done right, this can create a lot of opportunities in the various States.

Again, I would stress the importance of the provisions that we have in here that encourage local control, encourage accountability, encourage efficiency so public policymakers in one's State will ask: What is it that we can do that will allow this project to move forward, without unnecessary delays? Our communities will benefit if we can get these projects done under budget and ahead of schedule.

This is something I think every community should have the opportunity to strive for. As policymakers at the Federal level, it is something we need to begin to push.

Again, the issue we are all facing is how to pay for this. I know the Finance Committee struggled. We are still struggling with it. What is the proper funding level for mass transit? I think the key markers that the President and so many Members have talked about is that we have to make sure the money is money that does not come out of the general fund, that it stays with the—now I am talking about highways—gas tax, because the gas tax is an allocated stream of revenue that has gone to a special purpose, and that special purpose is to build roads and highways and meet the needs of this Nation.

We need to make sure we stay with that principle. Also, we want to make sure we do not begin to spend money on a bill, or through a bill, that is going to add to our Nation's deficit. Our deficits in this country are reaching historic highs, and we need to do something now to get deficit spending under control.

I think the Budget Committee and the Members of this body are beginning to treat that issue in a very serious way. So we still have some challenges ahead of us, as we move forward with this particular legislation.

I have a lot of confidence in Chairman INHOFE as well as Chairman SHELBY. I think they have the ability to shepherd this very controversial, very complicated piece of legislation through the process.

This is just one body. You have the House. They take a little different perspective on the highway transportation bill because they have districts they have to represent, and they don't look at it from a State view like those of us here in the Senate.

I don't like, in my State, to be putting in special projects because what happens with special projects is they take away the flexibility of the State. You are telling your State where they ought to be spending their money on certain projects. I think that ought to be left to the States.

For example, in the State of Colorado we have sort of a complicated process. We have a highway commission. They allocate. They make recommendations to the Governor and legislature. I don't feel comfortable as a policymaker here in Washington telling my Governor and the highway commission, people who know what is happening as far as their transportation needs, what should be done in the State of Colorado. So I try to avoid what is referred to as porkbarrel spending, where you earmark any particular projects in your particular State because I think that ought to be done in the State level.

In the Senate that has never been much of a problem. When you get to the House side, where Members have their own districts they have to worry about, sometimes they worry about not having adequate voice even at the State level for the district they represent, particularly if it is a rural area, because it gets run over by the masses in the metropolitan areas. So on the House side you will see more earmarking, but on the Senate side you don't see so much. If I talk to my colleagues I try to encourage them to stay away from earmarking projects.

I think the chairman on the Environment and Public Works Committee shares those views. He has done a good job of making this a responsible piece of legislation. We still have a few challenges ahead of us, but it has been a pleasure working with the chairman.

I see he has made it here to the floor. I don't see anybody else right now here who is interested in speaking, so without any more comment on anything.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first of all, I appreciate the efforts my colleague from Colorado has made on the committee all the way through, in addition to the transit portion of this bill. We have had a very cohesive committee in the time, well over a year, we have worked on this issue.

I would like to go through a few more sections here until someone appears, wanting to be recognized.

Arguably, this bill could be characterized as the most significant bill we will deal with in terms of how it affects so many people.

Regarding the Real-Time System Management Information Program, real-time information is the key to enhancing the operation and performance in the management of our transportation system. In drafting this legislation we adopted the ambitious and important goal of providing nationwide capability of real-time traffic and travel information. The more up-to-date information available to highway users, the better they are able to utilize the highway transportation system efficiently. The objectives of the Real-Time System Management Information Program include improving the security of the surface transportation system, addressing congestion problems, improving responses to weather events, and facilitating national and regional travel information.

As part of this real-time information program, States are required to establish a statewide incident reporting system within 2 years unless the Secretary grants a longer extension of time.

We try to recognize all the way through the bill what we don't want to do. Having been a mayor of a major city for four terms, I know what unfunded mandates are. That is something we don't want to be a part of, and we are not. We were sensitive to the problems of States and local governments so unique problems we cannot foresee at this time are taken care of with the discretion of the Secretary of Transportation.

Regarding future Interstate System routes, under current law, States have 12 years to construct National Highway System roads according to the standards of a highway on the Interstate System if they wish to designate the highway as a future Interstate System route. Recognizing the relative needs of the States and their respective abilities to meet these standards, this bill extends the current 12-year requirement to 25 years in order to give States more time to substantially complete the construction of highways designated as future Interstate System routes.

One of the problems, if we didn't do this, is that is making this a race to complete projects. The decision that programs should warrant more time, we feel, is going to end up being in everyone's benefit.

Stewardship and oversight is section 1802. Value engineering is another important stewardship tool for reducing the total cost of projects and improving their quality. Along these lines, States must annually certify the adequacy of their financial management systems and project delivery systems to meet all Federal requirements for financial integrity.

Accordingly, the Secretary is required to develop minimum standards for estimating project costs and to periodically evaluate the States' practices for estimating costs, awarding contracts, and reducing costs. States must apply a value engineering analysis during the design phase of all highway projects on the Federal aid system over $25 million and all bridge projects over $20 million to reduce the overall cost of the project and improve project quality.

Not only are States required to meet standards of financial integrity for federally funded projects, but they must also determine that subrecipients of those Federal dollars also have sufficient accounting controls and project delivery systems.

The bill also contains mechanisms to protect future Federal aid projects from fraud by mandating the debarment of contractors who have been convicted of fraud related to Federal aid highway or transit programs. It mandates the suspension of contractors who have been indicted for offenses relating to fraud.

This has become a problem because there is no mechanism set up to keep this from happening. We now will have the mechanism.

Section 1803 is design-build contracting. Under the current law, a design-build contract is defined as an agreement that provides for both the design and construction of a project. The goal of design-build contracting is to reduce costs by contracting out the design and construction of a project to a single contractor. At Senator CORNYN's request, the bill expands eligibility for design-build projects to include the design and construction of intermodal facilities.

Section 1804 is program efficiencies financing. To address certain program efficiencies in the area of financing, the bill revises current law by removing the existing restrictions that States must obligate all apportioned or allocated funds or demonstrate they will use all obligation authority allocated to it for a Federal aid highway or highway safety construction before advanced construction projects are approved. This revision clarifies that advance construction procedures can be used for all categories of Federal aid funds, and that when a project is converted at a regular Federal aid project, any available Federal aid funds may be used to convert the project.

The bill further removes the existing requirement that the Secretary first approve an application from the State before authorizing the payment of the Federal share of the cost of the project when additional funds are later apportioned or allocated to the State.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. FRIST. Mr. President, I will be speaking, for the next several moments, on leader time.

DC SCHOOL CHOICE INCENTIVE ACT

Mr. President, very briefly, I will address two issues, the first relating to a bill we passed 2 weeks ago. In fact, 14 days ago—exactly 2 weeks ago—the Senate voted 65 to 28 to help liberate Washington, DC's schoolchildren from its worst performing public schools. The bill itself was called DC Choice. The ''DC'' is obviously the District of Columbia. And the ''choice'' really is right at the heart of empowering parents and families and schoolchildren to participate in the decisions that we know strike right at the heart of opening that American dream and giving hope to young schoolchildren here in the District.

DC Choice had weathered years of debate and even a veto by President Clinton, but finally DC Choice is on its way to the District's neediest public school children.

It was 2 weeks ago that we passed a bill that helps schoolchildren here in the District. Under the DC School Choice Incentive Act, the District will receive 40 million new dollars to support public schools and charter schools and choice scholarships. Indeed, nearly 2,000 District schoolchildren will now be able to receive federally funded opportunity scholarships to the tune of about $7,500 each in order to attend schools of their choice.

I take this opportunity to thank some of the people—I regard them as true leaders—who made this historic legislation happen.

First, I commend Senator DEWINE for his integrity and fairness in guiding the school choice debate. Senator DEWINE, as we all know, is a consummate gentleman and has been an invaluable ally in the cause of justice for the District's schoolchildren.

I also express my deep appreciation and respect for Senator JUDD GREGG. His passion for this issue, his dedication to this issue, his unflagging commitment to seeing that DC's children get the very best education possible, the best education we can offer, really is an inspiration to us all.

Senator FEINSTEIN also deserves tremendous praise for her leadership. Her devoted support for DC schoolchildren was critical in moving this legislation, this effort forward.

But in addition to our colleagues, none of this would have been possible without the leadership and courage of the city's elected leadership, people such as Mayor Anthony Williams. He has been sincere and tenacious throughout the discussion and the debate. He has again and again reflected his belief in and commitment to the District of Columbia's children. Over the last several weeks and months, he has shown extraordinary strength and determination in achieving that goal of giving children here in the District that hope for the future, that opportunity to succeed, to realize the American dream.

Others who have been instrumental in this effort—Cardinal McCarrick, Peggy Cooper Cafritz, Kevin Chavous, and Virginia Walden Ford—have demonstrated exemplary leadership in accomplishing passage of this legislation. They are, to me, true champions of the public good, and the District of Columbia is made better by their leadership.

I also thank Senate staffers Mary Dietrich, Sharon Soderstron, Townsend Lange McNitt, and Denzel McGuire for their hard work, their compassion, and their dedication to passage of this bill. They devoted long hours to this legislation.

Washington, DC, the District here, is blessed to have caring and committed citizens pressing for change. And with passage of this bill, change is coming soon to the District's classrooms.

Some colleagues—some in this body and others—have implied that they want to reverse this historic accomplishment. These individuals, I think, by doing so, by expressing they want to see the reversal of this historic accomplishment, at least imply to me tolerating the status quo. That simply is unacceptable—the status quo—where we do have too many failing schools here in the District, where we have frustrated parents who see their children locked in these failing schools.

We have kids here in the District, within blocks and miles of this Capitol Building, without hope, without ambitions, without dreams. We have an obligation to help reverse this hopelessness, and indeed that is exactly what this legislation does.

We no longer can keep this city's children in the shadows. It is time to help lift them up, lift them up to ours and their parents' and their families' highest expectations. Lifting the District's children out of illiteracy and educational poverty, putting the District's children on the path to academic excellence, is just too important. The District's leaders want it, the District's parents want it, and, most importantly, the District's children deserve it.

We can all expect intense scrutiny as this choice plan, which is now law of the land, unfolds. Critics, I know, are going to assail every perceived setback. But also expect the District of Columbia schoolchildren to prove them wrong. In cities such as Detroit and Milwaukee, where choice has been tried, choice has thrived. We see scores go up; we see educational gaps narrow; we see parents much more pleased, much happier with their children's schools; and we see that public support for school choice rises.

Choice in the District will succeed because it is based on the belief that achievement is for everyone and not just a privileged few; that if you open the door to opportunity, hard-working people are going to step through that door.

I am proud of everyone who made the D.C. educational choice happen. It begins with the parents, probably ends with the legislators, but also includes the elected officials and committed community leaders.

I am also proud of the District schoolchildren. Now, because of DC Choice, they are more likely to have that more cherished of American birthrights: a solid education, something we all know is the key to the American dream.

MARRIAGE

Mr. President, I will take just a few minutes and comment on another issue, an issue that relates to the decision yesterday by the Massachusetts Supreme Court. By now we have all heard that, in the decision yesterday made by the Massachusetts Supreme Court, same-sex marriage is the law of that State according to the courts. Indeed, same-sex marriage licenses will be issued beginning May 17 in Massachusetts.

Same-sex couples from across the Nation will go to Massachusetts to get married. They will return to their home States—whether it be Tennessee or Alabama or Wyoming or Ohio, all 50 States—and I would think and assume that all of them would sue.

Some of our best legal minds conclude that courts will require recognition of same-sex marriage in every single State in the Nation.

Marriage should remain the union of a man and a woman. The evidence is overwhelming that children do best with a mother and a father. We are gambling with our future if we permit activist judges to redefine marriage for our whole society.

I want to be very clear: We reject intolerance. We reject hatred. We must treat all our fellow citizens with civility and kindness. But marriage should not be redefined by the courts, and we in this body cannot let it. We will not let it.

The U.S. Congress has codified this principle in the Defense of Marriage Act. It passed with 85 votes in the Senate and was signed by President Clinton in 1996. We must protect, preserve, and strengthen the institution of marriage against activist judges. If that means we must amend the Constitution, as it seems increasingly likely, then we will do just that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

CUBA

Mr. BAUCUS. Mr. President, I would like to spend some time today talking about the issue of Cuba. This was an issue that the Senate spent a lot of time on last year, and I am here today to tell my colleagues we are just as committed this year.

Last year, as most Members know, we made tremendous progress toward eliminating the Cuba travel ban and

easing the four-decade-old embargo. As part of the appropriations process last year, both the Senate and the House passed amendments overwhelmingly that would temporarily suspend enforcement of the Cuba travel ban.

I was, frankly, not only disappointed but outraged that this provision was taken out of the final omnibus bill. It should not have been, especially since the measure passed both bodies by very large margins. In stripping out that provision, the leadership broke the rules of Congress and defied the will of the majority of both Houses. That is simply undemocratic. It is wrong. It is not the way bills should be handled.

While disappointed, I emphasize today that the majority of us who favor ending this embargo will work hard this year to pass legislation, one way or another, through both bodies of the Congress, through conference, and on to the President's desk. Senators ENZI, DORGAN, and I have introduced legislation that would permanently end the travel ban. Last year, that legislation passed out of the Foreign Relations Committee by a vote of 13 to 5, a very large margin. The bill has 33 cosponsors and is now ready for floor consideration. I respectfully ask the majority and minority leaders to make floor time available to consider the legislation.

The fight to end the Cuba travel ban is not over. It has just begun. It is ironic that we finally face this moment at the same time that we are scrutinizing both the war on terrorism and the stretched Federal budget because enforcing the Cuba travel ban means the use of scarce Federal resources.

It is important for Senators to understand that the Cuba travel ban is enforced by the same Federal agency—the Office of Foreign Assets Control or OFAC—that also is charged with rooting out the sources of international terrorist financing and stopping the spread of weapons of mass destruction. Somewhere overseas, a massive international financial network routes millions of dollars to Osama bin Laden and other terrorists. Their access to dollars is their lifeline, their sole means of attacking our citizens and our soldiers. Rooting out this network and shutting it down is clearly one of our Nation's top priorities. Yet the very agency that is charged with this crucial task must divert valuable resources to enforce an absurd travel ban that a clear majority of Congress has already voted to terminate. It doesn't make any sense.

By its own estimate, OFAC diverts one-sixth of its employee resources to enforcing a silly travel ban. How can we justify diverting $1 of this limited budget, let alone one-sixth of our resources? Just as disturbing, late last week the Department of Homeland Security announced that it, too, would divert some of its resources to monitoring U.S. citizens who might have traveled to Cuba.

In a post-9/11 world, I do not understand the administration's priorities. I hope this year we can finally change this policy and the Senate will have a chance to fully debate the issue so we can finally make some sense out of the travel policy we do not have with Cuba.

I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. What is the matter now before the Senate? Is it the Dorgan amendment or the Gregg amendment?

The PRESIDING OFFICER. The matter before the Senate is the Shelby amendment.

Mr. REID. I thank the Chair.

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

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

MAD COW DISEASE

Mr. DASCHLE. Mr. President, I wanted to take a minute to come to the floor this afternoon to talk about the report issued yesterday by an international panel of experts that was convened by the Department of Agriculture to look at this whole issue of BSE, otherwise known as mad cow disease. They have, once again, announced—and publicly stated—what many of us have known for a long time, that there are still many outstanding questions about BSE.

I think the unfortunate fact about all of this is that the one question for which there isn't any doubt is the origin of the mad cow problem to date: one Canadian-born cow which cost a tremendous amount of market and value in the agricultural markets today. The one cow has shed an adverse light on American cattle producers in a way that is not only unfair but extraordinarily costly to every producer in the country today.

Just yesterday—yesterday—the cost per hundred in the Chicago Mercantile Exchange was $75. A couple of weeks ago, it was $118 per hundred. So we have seen a precipitous drop in the marketplace. Yet we still see a resistance on the part of many with regard to one simple effort that could change a great deal of confidence on the part of the American consumer—a change that has already been adopted by 43 other countries. Forty-three countries currently have country-of-origin labeling. We have been told by some of our exporting partners in some of those markets abroad that unless we implement country-of-origin labeling, we can forget about exporting our products to those countries. So we languish with tens of millions of dollars of product still on the water unable to unload in those markets, and unable to bring the product back to this country because we don't want to further jeopardize what fragile market there is.

We have—I do not recall now the exact figure—tens of millions of pounds worth hundreds of millions of dollars out there on ships unable to go anywhere in large measure because we continue to refuse to label the product. It is not just a question of consumer information, as important as that is.

I find it intriguing that today we label for content. We can tell you down to the last gram what is in a can or a package. We can tell you what the nutritional value is. We can tell you how many carbohydrates there are. We can tell what the calories are and the fat, but we can't tell you from what country it has come. It is a remarkable omission.

What is all the more remarkable is that there are those who actually argue that it would be an impractical requirement. We have already adjusted to content. We have adjusted to nutrition. But somehow it is impractical—and we are told almost impossible—for us to put country-of-origin label. I don't know anybody who honestly believes that, but there are those who profess that.

There is a reluctance on the part of the administration and a reluctance on the part of some in the Congress to recognize what I think is inevitable. One day we will have country-of-origin labeling. One day we will have the full advantage—I would say the patriotic advantage—of ensuring that we know we are eating American beef and agricultural products—one day. But that day should have been a year ago when we passed the farm bill. We gave them a year. They had until last September to implement it, and we have now been put on a 2-year delay.

But this international export issue, the consumer information issue, and the tremendous advantage in creating greater competence for producers alone ought to be arguments that the time has come for us to pass country-of-origin labeling without incumbrance.

For the life of me, I can't understand in this day and age, with all the facts on the side of those who argue in favor that there can still be the intransigence, that there can still be the reluctance and that there can still be the opposition from the administrations, the meatpackers, and some of our Republican colleagues in the House in particular. This is not a partisan issue in the Senate. There have been a number of Republican and Democratic Senators who have worked together to cosponsor legislation. An overwhelming number of Members have voted in favor—not once but twice so far. We have had ample debate. I must say I think the arguments get flimsier and flimsier.

The international panel that convened and looked at this situation once again offer us yet another illustration as to why it is important for us to do this now.

Let's pass country-of-origin labeling. Let's ensure that consumers have the same information as fellow consumers have in 43 other countries. Let's do for origin what we have already done for nutrition and for content.

We will continue to offer amendments. We will continue to make it the policy of this Senate, we will continue to ask for rollcall votes, and we will continue to keep the pressure on until this job is done. I think it is inexcusable and somewhat embarrassing that in this day and age with all the facts presented to us, as they now have been, that there could be any question. We need to get this job done—I think for good reason among producers and consumers alike. Patience is wearing thin.

Mr. DORGAN. Mr. President, will the Senator from South Dakota yield for a question?

Mr. DASCHLE. I would be happy to yield to the Senator from North Dakota.

Mr. DORGAN. Mr. President, let me say that the Senator from South Dakota, Mr. DASCHLE, has been leading on this issue for some long, long while.

Country-of-origin labeling is a requirement under the law. We passed it. It is just that this administration and the U.S. Department of Agriculture doesn't want to implement country-of-origin labeling.

I held up a beefsteak by consent here on the floor of the Senate about 2 weeks ago, and I asked the question: Can anyone here tell me where this piece of beefsteak came from? Everyone can say where his necktie comes from. That is labeled. Just turn it over. But can anyone tell where a beefsteak comes from? Could it have come from the plant in Mexico where one USDA inspector showed up, and found diseased carcasses hanging, covered with feces, getting ready to be put in the meat supply for human consumption in the United States? Could it be from that plant?

After that USDA inspection, that plant changed its name, changed owner, the inspector has never been back, and that plant is certified now to ship into this country. The question was, did that beefsteak come from that plant, a plant from Guatemala, Canada, the United States? Where? No one knows.

I ask the Senator from South Dakota, can he tell me which special interest has fought so aggressively, so long, and so hard to try to prevent country-of-origin labeling and prevent consumers and farmers and ranchers from being able to understand where this meat comes from? Who has the administration listened to, in deciding not to implement current law?

Mr. DASCHLE. That is a very good question, and I must say I know the Senator from North Dakota certainly knows the answer, but for the record it is the packers. There is an amazing coalition on one side, over 160 consumer groups—agriculture groups, good government groups of all kinds, people who have said without equivocation, this is good law, it ought to be done—160-plus groups on one side, the packers on the other side. Guess who has sided with whom? The administration is saying, we have to listen to those packers.

The point made by the Senator from North Dakota is absolutely right. We have had a change of heart with regard to downer cattle in this country and it goes to the point the Senator from North Dakota is making. We had the picture of a British downer cow, crippled, sick, unhealthy, and that picture was portrayed over and over and over again. Rarely was it noted that downer cow was not from the United States, that was a British downer cow. But it left the perception there are downer cows in this country that were entering the meat system, sick cattle, diseased cattle entering the meat system. So that steak could have come from a downer cow, a diseased cow.

What happened? The administration rightfully said, we are going to ban downer cattle from the market. I applauded it when they did. Now they say, by and large, other countries are beginning to comply, as well. But we do not have any assurance that downer cattle are going to be prevented from entering our meat processing system even now. While we have the safest system in the world, we ought to be able to buy and eat and be confident about our beef products because we have such a safe system, wouldn't it be nice to know whether or not an imported product which potentially could be a product from a downer cow came from Canada or Mexico or some other country? Wouldn't it be nice to know we have that additional confidence that we are eating beef where downer cattle have been expressly prohibited?

That is what we are talking about, improving upon an already good meat safety system. That, too, is a good reason why country-of-origin labeling ought to be law today.

Mr. DORGAN. If the Senator would allow me to inquire further, the opposition to country-of-origin labeling, as the Senator indicated, comes from the big meat packing plants, the beef packing plants. Eighty percent of the beef packing is controlled by four companies. It is a case of big interests versus the rest.

The ranchers of South Dakota and North Dakota produce the best quality beef in the world. We know that. They know that. So the question is, why should the consumers not be able to have access to the information about where this beef comes from at the meat counter when they purchase the meat? Is it South Dakota beef, North Dakota beef, Guatemala beef, or Mexico beef?

I will read the specifics regarding the Mexican plant because it is important. I discussed this previously in the Senate. In 1999, in May, one inspector from this country paid a surprise visit to a meat packing plant in Mexico. He found ''shanks and briskets contaminated with feces; disease condemned carcass was observed ready for boning and distribution into commerce.'' Then the Mexican officials took note, went to work to restore that plant's ability to sell meat in America. The Mexican plant regained the export license, it switched owners, it switched its name, and it now sells meat in America.

The question is, in South Dakota, when you buy a beefsteak, is it coming from a ranch in South Dakota? The consumers ought to have a right to know and ranchers and farmers want them to have that right. This Congress and this President ought to stand up for the interests of people out there farming and ranching in this country who demand this country-of-origin labeling become law.

Senator DASCHLE has led the fight for some years. I appreciate the fact today you said you will not quit. We will get this done. And whether it is forcing them to see the light or feel the heat, one way or the other, this administration has to stand aside and get out of the way and let us get this done for the American consumer.

Mr. DASCHLE. Mr. President, I reiterate my thanks to the Senator from North Dakota because he has been right alongside those fighting from the very first. I remember during the debate on the farm bill he was in the room as we began writing country-of-origin labeling. He was extremely helpful in ensuring we did the right thing in terms of the way the legislation initially was drafted. His point is well taken.

Today, we see an unusual phenomenon. It is not often producers and consumers merge, coalesce, and form the coalition they have in support of public policy. But in this case, it is one of those occurrences. One hundred and sixty organizations, consumers, producers, virtually every good government organization that cares about nutritional issues and agricultural issues, food and production issues, have joined together to say the time has come for us to do this. We have to do it now in light of BSE, in particular. Let's get this job done.

The international experts convened. They, too, said there are a lot of questions out there. We need to make sure we get the right answers to those questions. I am simply saying, as a result of yet another report, we have one more reason why country-of-origin labeling should be law today.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

STATE OF INTELLIGENCE

Mr. DORGAN. Mr. President, George Tenet gave a speech today at Georgetown that was profoundly disturbing to me and I want to visit about it for a moment.

I am not on the Senate Intelligence Committee. I am not someone who claims to have substantial knowledge or detailed knowledge about all of these issues. I spend a great deal of time concerned about economic issues and think I know something about some of those, but I do not pretend to be an expert in foreign policy or intelligence issues.

I, as have all of my colleagues, have sat in rooms with a label called ''top

secret'' and listened to briefings, top-secret, classified briefings from Mr. Tenet, from the Vice President, from National Security Advisor Condoleezza Rice, from Secretary Powell, and others. I, like others, have watched what has happened in recent weeks with the testimony from David Kay in which he came to the Senate as a witness and said, look, we got it all wrong. We were all wrong about the intelligence with respect to Iraq.

I listened to David Kay describe his assessment of the intelligence system—again, this is the top weapons inspector, appointed by President Bush—and what he said was, this country got it all wrong. Its intelligence service got it all wrong. He said, they failed the President.

They did not just fail the President of the United States, if they failed. They failed the President and they failed those in Congress who they looked right in the eye as they gave top-secret briefings to us about their assessment of intelligence. They failed the American people, in my judgment. So this failure was much greater than just a failure to properly inform the President.

This country has an enormous stake in making sure we have an intelligence community that works, one we support, and one we are proud of. Why? Someplace this afternoon there are intelligence agents who are pouring over the thinnest of hints about what terrorists might be deciding to do to murder Americans, to attack an American city, to commit a terrorist act against our country, and we must rely on those intelligence agents and the intelligence community to understand it and to get it right, not to exaggerate it, not to misinterpret it, but to understand it and get it right. The safety and security of this country depends on it.

None of us wants the intelligence community to be held up in anything other than the highest esteem. I want to be able to say the intelligence community gets it and gets it right. But I cannot do that at the moment.

Something is wrong, and we must fix it. When the top weapons inspector comes to the Congress and says, look, the intelligence was all wrong, it failed the President, you don't need much more than that to understand somebody has to be accountable. We have to, posthaste, begin to fix that which failed us.

I have not heard of all of Mr. Tenet's presentation; I just heard the highlights a bit ago in which he was defending the CIA. But let me describe one of the reasons I found Mr. Tenet's remarks so distressing.

Last evening I happened to be watching something on ''60 Minutes.'' They were interviewing a gentleman named Greg Thielmann. Mr. Thielmann had been in charge of analyzing Iraqi weapons threats for Secretary of State Colin Powell's Intelligence Bureau. He was the one who, after 25 years, became the Acting Director of the Office of Strategic Proliferation and Military Affairs. He was responsible, before he retired, for analyzing the Iraqi weapons threat.

He and his staff had the highest security clearances. They saw virtually everything, whether it came in to the CIA or the Defense Department. He was, by all accounts, admired by everyone, and had a long and distinguished career.

During the ''60 Minutes'' interview, Mr. Thielmann describes watching the February 5, 2003, presentation Secretary Powell made to the United Nations. He says at the time Secretary Powell made that presentation he was nonplused by what Secretary Powell was saying. He says what Powell was saying about a range of things was not at all in concert with the intelligence the State Department had. About the charge that Iraq was importing aluminum tubes to use in a program to build nuclear weapons—he said:

> This is one of the most disturbing parts of Secretary Powell's speech for us.

He is talking now of those who were part of the intelligence-gathering part of the State Department.

Intelligence agents intercepted the tubes in 2001, and the CIA said they were parts for a centrifuge to enrich uranium—fuel for an atom bomb. But they got information from the Oak Ridge National Laboratory—those are the scientists who enrich uranium for our bombs, our nuclear weapons—and the experts there advised that the tubes were all wrong for a bomb program and the aluminum, apparently, it turns out, after further inspection, was exactly what the Iraqis wanted for artillery.

So they sent the word up to Secretary Powell this is not about nuclear weapons, it is about artillery, and the fellow who is at the Oak Ridge Laboratory, Houston Wood, said:

> I guess I was angry, that's the best way to describe my emotions. I was angry at that.

Mr. Thielmann was talking now about Secretary Powell's speech to the United Nations. He said he found that the tubes could not be what the CIA thought they were. They were too heavy, three times too thick, and certain to leak.

The transcript says:

> ''Wasn't going to work. They would have failed,'' says Wood. . . .

And they reached that conclusion in 2001.

They reported to Secretary Powell's office that they were confident the tubes were not for a nuclear program. And then nothing happened. About a year later, when the administration was building the case for the war, the tubes were resurrected on the front page of the New York Times. And Mr. Wood says:

> I thought when I read that there must be some other tubes that people were talking about. I just was flabbergasted that people were still pushing that those might be centrifuges.

The New York Times reported that senior administration officials insisted the tubes were for an atom bomb program.

Again, Mr. Wood, the expert from Oak Ridge Laboratories, says:

> Science was not pushing this forward. Scientists had made their determination, their evaluation, and now we didn't know what was happening.

The scientists had already said this cannot be for the development of nuclear weapons.

So in his United Nations speech, Secretary Powell acknowledged there was a disagreement about the aluminum tubes, but he said most experts agreed with the nuclear theory. Mr. Powell said:

> There is controversy about what these tubes are for. Most U.S. experts think they are intended to serve as rotors in centrifuges used to enrich uranium.

Most of the experts—nearly all of the experts—are at Oak Ridge. And Mr. Houston Wood, at Oak Ridge, claims he does not know anyone in academia or a foreign government who would disagree with his appraisal.

He said: I don't know a single person anywhere who believed that these aluminum tubes were for a nuclear program.

Now, I do not understand this. It appears to me that information was available that would have debunked several key portions. I have not talked about the alleged yellowcake purchase from Niger, which was in the President's State of the Union Address, which turned out to have been wrong, or the UAVs, the most sensitive of information, which turned out to be wrong.

Mr. Thielmann, who was, again, the top official at the State Department for the gathering of intelligence for presentation to Secretary Powell, talked about some of the slides Secretary Powell was using. He talked about the stockpile of between 100 and 500 tons of chemical weapons. He said part of the stockpile was clearly in these bunkers. He was showing slides:

> The four that are in red squares represent active chemical munitions bunkers. How do I know that, how can I say that? Let me give you a closer look.

Up close, Powell said you could see a truck for cleaning up chemical spills. It is a signature for a chemical bunker.

Quote:

> It's a decontamination vehicle in case something goes wrong.

But again, Mr. Thielmann, who is the top intelligence person who is providing information to Powell, said:

> My understanding is that these particular vehicles were simply fire trucks. You cannot really describe [that] as being a unique signature.

In fact, it is interesting, when the weapons inspectors showed up over there, that is what they discovered, it was firetrucks. And in other circumstances, that which was part of the slides shown, they were trucks with cobwebs in them and had not been used for a long while. There was no evidence of weapons of mass destruction.

So this is a ''60 Minutes'' presentation from the last evening, in which a top intelligence person, with all the clearances, having seen all the intelligence, says Secretary Powell, and others, would have had the intelligence to deal with these questions easily.

This debate is not about pulling Saddam Hussein out of a rat hole. Saddam Hussein was more than a rat. Saddam Hussein was an evil man who killed thousands, perhaps hundreds of thousands. It is the case our country has opened mass graves the size of football fields, and those graves contain the skeletons of thousands and thousands and thousands of Iraqis. The world is much better off because Saddam Hussein has been apprehended and no longer runs the country of Iraq.

But the question for this country—and it is an important question—is, when the call is made the next time—perhaps an hour from now, perhaps a month from now—to have our intelligence community make an accurate assessment, will they make an assessment that is accurate? Will they fail us? Will they fail the President? Will they fail our country? This is a very significant issue.

Mr. Tenet's speech today was not only defensive, but Mr. Tenet's speech failed, in my judgment, to acknowledge what the country has widely acknowledged, starting with David Kay and others, that the intelligence failed us with respect to Iraq. And that bothers me a great deal.

Now, I know there will be people who come to the floor of the Senate, and they will say none of this really matters. Saddam Hussein was a bad guy. He was; no question about that. But if you say that good intelligence does not matter, then don't sleep very well tonight because terrorists want to commit terrorist acts in this country. Terrorists want to kill people in this country. The only way we are going to make certain we protect this country is through good, strong intelligence.

I worry a great deal about an intelligence community that does not seem to be accountable, does not get it right, and no one cares. The President ought to be furious about what is happening. The Congress ought to be apoplectic about what is happening. Both should demand on an urgent basis a complete, thorough review of what went wrong and how to fix it—not tomorrow, not yesterday, but right now. I don't see that urgency at all. What I see is the President finally getting pushed and nudged the last couple days, saying: I will put together an independent commission that can investigate intelligence, only under pressure.

Then we have people who come to the floor and say: There is no problem here. Saddam Hussein was a bad guy found in a rat hole. It is better that he is in jail.

Every single one of us—Republicans, Democrats, the White House, and the Congress, and especially the American people—must rely on a strong system of intelligence that gets it right to protect this country's long-term security. To the extent that, as David Kay indicated, it failed and to the extent that, as so many others have testified, circumstance after circumstance that was alleged was not accurate, and to the extent now that Mr. Tenet continues today to seem to believe all was well and all those who are critical are somehow just plain wrong, America is weakened for that.

We will strengthen ourselves when we understand we must rely on good intelligence. And if we have not received good intelligence, we must fix that system now. It must be done posthaste. It must be job one. There is an urgency for us to take action now to make certain the next intelligence assessment, perhaps an hour from now, to try to protect this country will be an assessment that is accurate and one upon which we can rely.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wish to respond to a few of the comments our colleague from North Dakota has just made. I begin with the proposition that it does help to have been on the Senate Intelligence Committee or to be a member of the committee today to conduct a more thoughtful, reasoned discussion of this debate than has generally been characterized by the media accounts.

People in the media tend to try to capsulize everything in an attention-grabbing headline way when in fact intelligence is a very complex, difficult proposition that needs to be handled and approached in the most cautious and careful manner.

I think it is important for those people who have been on the committee or, as the Senator from Missouri sitting next to me noted, currently just received briefings as a member of the committee—it is important for them to be able to respond when comments have been made such as those just concluded.

David Kay did not say we got it all wrong. I invite anyone who would like to bring to this floor a quotation from David Kay that says ''we got it all wrong'' to do so. He did not say that. I know that is what opponents of the Bush administration wish he had said, but he didn't say that. Let me quote to you some of the things he did say.

He was asked a question by Senator MCCAIN testifying before the House Armed Services Committee:

> You agree with the fundamental principle here that what we did was justified and enhanced the security of the United States and the world by removing Saddam Hussein from power?

David Kay:

> Absolutely.

But then Senator KENNEDY asked a question that kind of got to some of the points our colleague from North Dakota just made. He asked:

> Many of us feel that the evidence so far leads only to one conclusion: that what has happened was more than a failure of intelligence, it was the result of manipulation of the intelligence to justify a decision to go to war.

David Kay:

> All I can say is if you read the total body of intelligence in the last 12 to 15 years that flowed on Iraq, I quite frankly think it would be hard to come to a conclusion other than Iraq was a gathering, serious threat to the world with regard to WMD.

That is exactly the conclusion that other Members of this body articulated. I won't quote names, but I remember several of my colleagues, including a Member on the other side of the aisle, saying pretty much the same thing.

President Clinton said almost exactly the same thing. In fact, in 1998, we overwhelmingly passed a resolution in this body authorizing President Clinton to take action to remove the Saddam Hussein regime in Iraq precisely because of this. The intelligence that existed then, that existed before then, and that existed before our most recent conflict with Iraq all verified what David Kay said was true.

So far from saying that we got it all wrong, David Kay is saying we were perfectly justified in taking the action we took. Part of getting it all wrong would have been the information that we had regarding the violations of the U.N. resolutions. What did David Kay think about that?

He said:

> In my judgment, based on the work that has been done to this point of the Iraq Survey Group, and in fact, that I reported to you in October, Iraq was in clear violation of the terms of Resolution 1441. Resolution 1441 required that Iraq report all of its activities: one last chance to come clean about what it had. We have discovered hundreds of cases, based on both documents, physical evidence and the testimony of Iraqis, of activities that were prohibited under the initial U.N. Resolution 687 and that should have been reported under 1441, with Iraqi testimony that not only did they not tell the U.N. about this, they were instructed not to do it and they hid the material.
>
> Iraq was in clear and material violation of 1441. They maintained programs and activities, and they certainly had the intentions at a point to resume their program. So there was a lot they wanted to hide because it showed what they were doing was illegal. I hope we find even more evidence of that.

This is what David Kay actually said. One of the arguments made was that, somehow or other, the CIA and our intelligence community were pressured by the Bush administration to somehow modify the intelligence to suit their nefarious purposes, the implication being that the administration wanted to go to war and needed to somehow manipulate the intelligence to reach that conclusion.

Here is what David Kay said about that:

> And let me take one of the explanations most commonly given: Analysts were pressured to reach conclusions that would fit the political agenda of one or another administration. I deeply think that is a wrong explanation. And never—not in a single case—was the explanation, ''I was pressured to do

this.'' The explanation was, very often, ''The limited data we had led one to reasonably conclude this. I now see that there's another explanation for it.'' And each case was different, but the conversations were sufficiently in depth and our relationship was sufficiently frank that I'm convinced that, at least to the analysts I dealt with, I did not come across a single one that felt it had been, in the military term, ''inappropriate command influence'' that led them to take that position.

Some people in saying, well, maybe we didn't get it all wrong, but what was the real state of intelligence here and did it comport with what we thought we knew—I thought the colloquy between Senator MCCAIN and David Kay at this hearing was most interesting.

Senator MCCAIN:

Saddam Hussein developed and used weapons of mass destruction; true?

David Kay:

Absolutely.

Parenthetically, I would note, this is not an answer from a man who is saying we got it all wrong because, remember, the allegation had been that Saddam Hussein had developed and used weapons of mass destruction. So he didn't say: We got it all wrong. He said: Absolutely.

Senator MCCAIN then:

He used them against the Iranians and the Kurds; just yes or no.

David Kay:

Oh, yes.

Senator MCCAIN:

OK. And U.N. inspectors found enormous quantities of banned chemical and biological weapons in Iraq in the '90s?

David Kay:

Yes, sir.

Senator MCCAIN:

We know that Saddam Hussein had once a very active nuclear program.

David Kay:

Yes.

Senator MCCAIN:

And he realized and had ambitions to develop and use weapons of mass destruction.

David Kay:

Clearly.

Senator MCCAIN:

So the point is, if he were in power today, there is no doubt that he would harbor ambitions for the development and use of weapons of mass destruction. Is there any doubt in your mind?

David Kay:

There's absolutely no doubt. And I think I've said that, Senator.

There is one final thing I would like to talk about that David Kay actually said. Senator CLINTON asked him a question at that hearing as follows:

I think that rightly does raise questions that we should be examining about whether or not the U.N. inspection process pursuant to 1441 might not also have worked without the loss of life that we have confronted both among our own young men and women, as well as Iraqis.

David Kay:

Well, Senator Clinton, let me just add to that. We have had a number of Iraqis who have come forward and said, ''We did not tell the U.N. about what we were hiding, nor would we have told the U.N. because we would run the risk of our own''—I think we have learned things that no U.N. inspector would have ever learned given the terror regime of Saddam and the tremendous personal consequences that scientists had to run by speaking the truth. That's not to say, and it's not incompatible with the fact that inspections accomplish a great deal in holding a program down. And that's where the surprise is. In holding the program down, in keeping it from break out, I think the record is better than we would have anticipated. I don't think the record is necessarily better than we thought with regard to getting the final truth, because of the power of the terrorist state that Saddam Hussein had.

The bottom line is that David Kay recognizes that, while the U.N. inspectors found certain things, the inspections that he performed were even more helpful because of the pressure that the Iraqis had been under when Saddam Hussein was in power. But what David Kay said—if you read all of the rest of the testimony—was basically this: There are many things we found about Saddam Hussein's weapons program. We even found some weapons, and we talked to a lot of Iraqis who told us that he had every intention of reinitiating the programs once the sanctions were lifted. Everything was in place for him to do that.

The thing that puzzled David Kay is that we had not found the stocks of chemical weapons, primarily. We knew that he had artillery shells, some of which were filled with chemical agents, and others that could be filled with chemical agents, and that he had large stocks of those agents, as well as some biological agents.

How do we know that is true? Because the Iraqis admitted that and the U.N. inspectors confirmed it. He admitted it in 1998. He never explained what happened to those stocks thereafter.

Now, one would think that when he admits that he has the stuff—and we know that he used that same kind of weapon before—that if he doesn't prove to us that he got rid of it—in fact, he offers no explanation about where it is—you have to assume that he hasn't. It would be imprudent to assume otherwise.

So to suggest that David Kay came back and said, no, we got it all wrong, that is wrong. What he puzzles about was why we had not found this stock of artillery shells.

Before the military activity was taken, all of the Senators were invited every day at 9 o'clock to go to the secure area of the Capitol to visit with the general and CIA people who briefed us on the status of the war. Every morning, if colleagues will remember, one of the things they briefed us on was how close our troops were getting to the red line—that line around Baghdad—where we had information that artillery with chemical shells could be lobbed against our soldiers. We did everything we could to stop that. We bombed warehouses of artillery, and we were trying to take out the command and control that would issue the orders. We dropped millions of leaflets on the military commanders of the Iraqis, saying they would be war criminals if they carried out orders to fire those artillery shells against our troops.

We were surprised when we took the Baghdad Airport and they had not fired the artillery shells. We thought they were going to use them. We went to a lot of trouble to take them out. Maybe we took them out. Maybe we ruined their plan with command and control. Maybe they had gotten rid of them by then. Maybe they buried them or sent them to Syria.

Secretary Rumsfeld testified yesterday that there are about five different scenarios that could explain why we have not found the artillery shells so far. David Kay says he is not sure we will ever find them, or that they existed on the day we went to war against Iraq. Maybe they had been destroyed, although you would wonder why Saddam Hussein didn't tell anybody about it. Maybe they were sent to other countries or maybe they were given to terrorists. That would be a terrible thing, but we don't know.

Obviously, we had no evidence that they no longer existed. At one time, they existed. So it is far from David Kay saying we got it all wrong; he is saying that we got it all right, except—and I am paraphrasing here—for the fact that we cannot explain what happened to those weapons, and he wonders whether they existed when we went to war.

What does George Tenet have to say about it? Our colleague says that George Tenet's comments were defensive. Maybe they were a little defensive. If you have been the subject of attack for several weeks about how you got it all wrong, you would be defensive, too.

I found his speech today to be a very interesting presentation, a careful presentation about what, in fact, we knew, why we knew it, and why it would not have been prudent for us not to take action on it. I thought this to be particularly interesting.

One of the things that he said was:

To understand a difficult topic like Iraq takes patience and care. Unfortunately, you rarely hear a patient, careful, or thoughtful discussion of intelligence these days. But these times demand it because the alternative—politicized, haphazard evaluation, without the benefit of time and facts—may well result in an intelligence community that is damaged and a country that is more at risk.

I don't find that defensive. Rather, I find it an attempt to try to put this discussion into a thoughtful, careful way of analyzing where we were right and where we were wrong, and how to make sure we are as right as possible in the future. He went on to say:

By definition, intelligence deals with the unclear, the unknown, the deliberately hidden. What the enemies of the United States hope to deny, we work to reveal. The question being asked about Iraq in the starkest terms is, were we right or were we wrong? In

the intelligence business, you are almost never completely wrong or completely right.

He goes on to detail the information we had about the missile program of the Iraqis. I would like to say to colleagues, with respect to the missile program, it appears that we got it right. He talks about what we thought we knew, what he told the President we thought we knew, and what we believe is the case of our military actions. And with respect to their efforts to develop missiles that were in violation of U.N. resolutions, they appear to have gotten that pretty well right.

His conclusion on that was this, and I will quote it:

My provisional bottom line on the missiles: We were generally on target.

He says that because he urges us to consider the fact that there is still a great deal of information left to be discovered in Iraq. They are nowhere near complete in their effort to try to find what Saddam Hussein had and to analyze how dangerous it was.

With respect to that general proposition, I want to quote this:

And to come to conclusions before the war other than those we reached, we would have had to ignore all the intelligence gathered from multiple sources after 1998.

He detailed many here. He said:

My provisional bottom line on missiles: We were generally on target.

Regarding the unmanned aerial vehicles, he said:

My provisional bottom line today: We detected the development of prohibited and undeclared unmanned aerial vehicles. But the jury is still out on whether Iraq intended to use its newer, smaller, unmanned aerial vehicle to deliver biological weapons.

With regard to nuclear weapons, he said:

My provisional bottom line today: Saddam did not have a nuclear weapon, he still wanted one, and Iraq intended to reconstitute a nuclear program at some point. We have not yet found clear evidence that dual-use items Iraq sought were for nuclear reconstitution. We do not yet know if any reconstitution efforts had begun. But we may have overestimated the progress Saddam was making.

That is in contrast to what he said before the first gulf war when he noted that that colored the way they approached their analysis with respect to his nuclear program.

Then, with respect to a biological program, he said:

My provisional bottom line today: Iraq intended to develop biological weapons. Clearly, research and development work was underway that would have permitted a rapid shift to agent production if seed stocks were available. But we do not yet know if production took place. And just as clearly, we have not yet found biological weapons.

Finally, with regard to the chemical weapons, he said:

My provisional bottom line today: Saddam had the intent and capability to quickly convert civilian industry to chemical weapons production. However, we have not yet found the weapons we expected.

I will quote a little more on this point:

I have now given you my provisional bottom lines, but it is important to remember that estimates are not written in a vacuum. Let me tell you some of what was going on in the fall of 2002.

He proceeds to detail several kinds of sources that came to the attention of the intelligence community, sources which provided information which no rational intelligence leader would have ignored: Saddam Hussein calling together his nuclear weapons committee—I am not going to go into all of this detail. He quotes, ''A stream of reporting from a different sensitive source'' that caused the intelligence community to advise the President, the Vice President, and others that they believed Saddam Hussein was actively trying to pursue these programs.

He said:

So what do I think about all of this today? Based on an assessment of the data we collected over the past 10 years, it would have been difficult for analysts to come to any different conclusions than the ones we reached in October of 2002.

That is what George Tenet said. You can say he is being defensive. I say it is important for George Tenet to speak out and to explain to the American people how difficult it is to get intelligence, what we thought we knew at the time, what he advised our leaders of, what we think we know today.

He also noted the fact they have instituted efforts internally to try to discover why they didn't know things perhaps they should have known, how they can do it better in the future.

When you combine that with what David Kay said about the fact there was no evidence that our leadership in any way pressured our intelligence community to come to different conclusions, you have to stand up to the people who gathered this intelligence and presented it to the leaders. They maybe didn't get it all right, but they did their best. And with respect to our leadership, there is no reason to believe they didn't treat this information with the utmost of seriousness and honesty; that they presented it to the American people, exactly as George Tenet said today. They presented it in an honest way and that it would have been irresponsible of them to have acted any differently, to have presented it any differently given the information that had been presented to them.

I think that had the President, knowing what he now knows and all of this would eventually come out even though a lot of it is classified information, if the President had not taken action and, God forbid, something had happened, a lot of people on the Senate floor, in the Senate, around the country, and certainly pundits would be saying: Why did President Bush ignore these warnings? Why did he ignore what the intelligence community came up with?

There are some people who are saying that with respect to the attack of 9/11 when the President had virtually nothing, in fact, when we had obviously no reason to believe that on September 11 there would be an attack from the airliners that would be used by the al-Qaida terrorists, and yet with virtually nothing to go on, people are saying the President should have known and done something about it.

With all of the evidence we had about Saddam Hussein and all of the evidence with regard to Iraq, to have ignored that would have been absolutely irresponsible. My colleagues who are criticizing him today for acting would then be criticizing him for not acting, I believe.

In a political season, you are darned if you do and darned if you don't. We understand that. But I think it is important, as George Tenet asked us to do, especially for those of us in the Senate, especially those of us who served on the Intelligence Committee, to urge people to approach this subject from a sober, careful, nonpoliticized point of view because lives are at stake.

We make decisions and the executive branch and military make decisions based upon our intelligence. We have to make sure that the way we restructure intelligence, the funding decisions that we make, and the other things we do are not based upon quick judgments, on political judgments certainly, but rather are based upon a calm analysis, a reflection based upon perspective and certainly an understanding of the difficulties that the intelligence community faces.

When you do all of that, I think you can come to no other conclusion than what David Kay came to, that George Tenet said, the President, the Vice President, Secretary Powell, before the United Nations, that there was a problem here that could not be ignored.

It would be absolutely wrong for anybody to suggest today that we got it all wrong and that for some reason that is President Bush's fault and certainly not for anyone to suggest that somehow or another our leadership misled the American people in order to go to war. That would be the absolute height of irresponsibility. No President, Republican or Democrat, I can think of would ever do such a thing.

I am disappointed that some—and I am not referring to anybody in this body at this point—that some people would actually suggest that would be the case. But when we talk about the intelligence the way it has been discussed here today, it leads to that kind of conclusion. I think that is unfortunate.

I urge all of my colleagues to try to discuss this in a relatively impassioned way, a carefully constructive way so working together we can craft the kind of policies that will provide for our security in the future, protection of the American people, and certainly the protection of the people we send into harm's way to protect us.

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

Mr. DORGAN. Mr. President, my colleague's admonition in using care in

discussing this issue is admirable. Care is exactly what we ought to use when we evaluate what has happened and not happened.

My colleague, incidentally, has just made the point that there was intelligence that suggested that Iraq posed a threat. And that was exactly my point. That is exactly the intelligence that was represented to this body and to the House and to the American people. But it turns out the intelligence, the specific intelligence, that was presented was wrong.

My colleague also, at the start of his presentation, defied anyone to show him a quote from Mr. Kay that said he was wrong or we were wrong. I will do that. My colleague will likely want to then revise his remarks. My hope is he might do that.

Here is the front cover of Newsweek this week. Mr. David Kay—and this is in quotes—says:

We were all wrong.

I will go to the inside on page 27, again a direct quote of Mr. Kay:

It turns out we were all wrong probably in my judgment.

This is testimony before the Armed Services Committee. On a third point, in the fourth paragraph of his prepared testimony given before the Armed Services Committee, quoting David Kay:

Let me begin by saying we were almost all wrong.

My colleague challenged someone to come up with a quote. There are three of them, and my hope is the record might at least stand on direct quotes that are presented here before a committee of the Senate.

If one dare whisper these days—just whisper—about these issues, it is perceived as a frontal assault against the President of the United States. That is sheer, utter nonsense.

The question before this body and this country, in my judgment, is if the top weapons inspector appointed by this President goes to Iraq and comes back to us and says that body of intelligence that was given us, given our country, given our Congress before we went into Iraq was all wrong, we have an obligation to address that issue, not later, but now. We have an obligation not to try to protect someone in the administration or in Congress. We have an obligation to protect the American people not later, but now.

I am not on the Intelligence Committee. I have deep admiration for all who do serve, Republicans and Democrats. But I would hope, just as one Member of the Senate, that the most significant energy in this body to follow where this string leads and try to determine what is wrong, what happened, what persuades Mr. Kay to come and say, ''It turns out we were all wrong,'' I would expect my colleagues on the Intelligence Committee, without respect of politics, just to follow that string to find out what on Earth happened and how do we fix it immediately.

To suggest that somehow that we ought not worry about this, that invading Iraq was fine because Saddam Hussein was an evil man, just changes the subject. Sure he was an evil man. We found him in a rathole. He was a rat in a rathole. He is a killer, a murderer. The world is better off because he doesn't lead Iraq. That is not the question.

The question is what trust, what confidence do we have in this country's system of intelligence today? Our intelligence system needs to pore over information about chatter, about satellite photos, about raw intelligence to determine who might be planning an attack tonight on an American city, who might be designing right now to kill Americans. I want that intelligence community to get it right. I want it to be the finest intelligence community in the world. I am sorry that I say Mr. Tenet is defensive. I am sorry to have to say that I think he got it wrong. But David Kay says it and others say it.

All of us in this Chamber depend on our intelligence community. We spend a great deal of money on it. I want the finest we can possibly have protecting this country. If anyone believes our intelligence community got it all right, did just fine, then they ought to sleep like a baby—go to sleep early and sleep late and have a great night's sleep. But if they believe, as Mr. Kay does—and, yes, that is what he believes. I have quoted three different occasions where he said we got it wrong, and if someone believes, as many respected foreign policy thinkers and intelligence thinkers do believe, that there is something wrong, something significantly wrong that we need to address, then we ought to join together, Republicans and Democrats, and not worry about who might be criticized, just decide we are going to fix it. That is our job.

It is not our job to protect the Senate, to protect the President. It is our job to protect this country. I worry a great deal about what is going on. My colleague went far afield and made a defense of the Iraq resolution. Well, a good many of us in the Senate and in the Congress voted for that resolution. Now we discover Mr. Kay suggests the intelligence got it all wrong, the basis for that resolution got it all wrong.

Mr. KYL. Will my colleague yield for one moment on that?

Mr. DORGAN. I would be happy to yield.

Mr. KYL. I really do appreciate that. I think what the Senator referred to and what he read was that Mr. Kay said: We all got it wrong. But he did not say: We got it all wrong.

Mr. DORGAN. Reclaiming my time.

Mr. KYL. Go right ahead and read that again. That is the distinction I would make. We did get one thing wrong. We cannot find the weapons.

Mr. DORGAN. With due respect, and I have great affection for my colleague from Arizona, he has it wrong. Let me read from the fourth paragraph of Mr. Kay's testimony given to the Senate Armed Services Committee: ''Let me begin by saying we were almost all wrong.''

Now, this is not about parsing words. It is Mr. Kay saying: Look, the intelligence was wrong.

I say to my colleague from Arizona, my point is not about the President, it is not about the Vice President, it is not about Condoleezza Rice or Secretary Powell or Mr. Tenet. It is about whether this country is well served by the current intelligence community. Do they have it right or not? If they got it wrong, as many suggest they have, and it is pretty hard to make the case they got it right, then what do we do about it?

Mr. BOND. Mr. President, will my colleague yield for two quick questions?

Mr. DORGAN. I would be happy to yield for one question and then another.

Mr. BOND. Well, the most important question and I know this is a very important debate—the Senator from Maine was hoping to speak on the bill and I wondered how much longer the Senator from North Dakota was going to speak.

Mr. DORGAN. Well, I do not have a gauge on the tank. In fact, I barely came to the Senate expecting to speak for 5 minutes and then the Senator from Arizona piqued my interest and I decided I had to go find some quotes and respond to his presentation. I know the Senator from Maine has been here awhile, and I will not be much longer.

Mr. BOND. If the Senator will yield for one additional question.

Mr. DORGAN. I would be happy to yield.

Mr. BOND. Does the Senator realize all the rest of the Intelligence Committee is in S–407 receiving a 300-page report compiled over 8 months by the entire staff of the Intelligence Committee, after over a couple of hundred interviews and reviewing tens of thousands of documents, which goes right to this question and which we in the committee will be working on and trying to present either in classified or we hope mostly unclassified material so we can carry on this debate? Is the Senator aware that the reason there are not members of the Intelligence Committee here is that they are getting that information right now? Is the Senator aware of that?

Mr. DORGAN. Mr. President, I am aware of that. I might say I have high hopes that that study, which has been underway for some long while, will be helpful to us. I must say also that there is a portion of the study that is a black hole. The study that is going on up there and will be released deals only with the gathering of intelligence, which I think shortchanges this Senate and the American people, because it does not deal with the use of that intelligence. But we can deal with the issue of the use of intelligence at another time. I wish it had been done in the same report.

Again, this issue of intelligence is critical to this country's protection and security interests. I believe that is something on which we would agree. We share that understanding, and my hope is that up in 407—the Senator from Missouri refers to a room in the Capitol Building that is a room where the Intelligence Committee meets. It is a room where top secret briefings are given. One of the things that persuaded me to come to the floor this afternoon is I have sat in that room. I have sat in that room with a neon sign that says ''top secret'' up on top flashing, and I have had the very people who developed this intelligence assessment look me in the eye and give me information that I now know to be wrong. That bothers me a lot.

I do not know how that happened. I do not know whether it was just bad collection of data, bad interpretation of data, or misuse of data. I do not have the foggiest idea, but I am saying this, that as one Senator I have been sitting in that room, I have asked direct questions, and I have had people look me in the eye and give me an answer that I now know to be wrong. I think most Senators who have had that experience are concerned about it.

I say to the Senator from Missouri, because I do not know whether he heard me say it, I have great admiration for those who serve on the Intelligence Committee. I do not serve there. I do not profess to be an expert in intelligence or foreign policy, but all of us have an obligation to be as informed as possible about all of these issues.

I expect the most aggressive Members of this Senate, following the trail of where this leads, to be those who serve on the Intelligence Committee. If Mr. Kay truly believes we got it all wrong, quote, unquote, then I would expect the Intelligence Committee to lead the way in finding out why that happened and how we get to a point where we never have that assessment again when it comes to this country's vital national interests.

Again, my colleague from Maine has been patient and I would not have spoken at this length except that I was intrigued and interested by my colleague from Arizona.

So I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I will take less than 1 minute, because I do not want to excite my friend any further, to say that all of us on the Intelligence Committee not only share the commitment to getting to the bottom of what went on, but we also know that David Kay said it was absolutely right and prudent to go into Iraq because it was more dangerous than we knew in certain areas. I hope the report we issue will answer questions that I and the other members of the Intelligence Committee have raised and that all Members of this body ought to be raising, and that we will provide some recommendations for curing the problems we find.

I hope now we can turn back to the SAFETEA bill, S. 1072, which is very important. I appreciate the patience of the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, as the Senate begins consideration of the transportation legislation, let me first commend the distinguished managers of this bill, Senator INHOFE, Senator BOND, Senator JEFFORDS, and Senator REID for their efforts to bring this vital 6-year reauthorization bill to the Senate floor. I particularly wish to recognize the efforts of Senator BOND. He has been a tireless champion of improving the transportation infrastructure in this country. He has worked night and day to craft a well-balanced bill. I hope we can move forward in considering this bill without undue delay.

This legislation would be very beneficial for the people of Maine and for our national economy. Nationwide, our transportation system is the lifeblood of economic development, the catalyst for the creation of thousands of jobs. Our transportation system affects our competitiveness, both within the United States and competing internationally.

For our economy to prosper, we need an integrated modern transportation system that realizes our goal of cost-effective and efficient modes of transportation while also recognizing the need for continued progress in improving the quality of our air. That is why I have not only supported funding for our highways and our bridges, but also I have advocated increased Federal funding for mass transit, for passenger rail initiatives, and alternative means of transportation as well.

In a large rural State such as Maine, an effective transportation network is absolutely essential. Maine has 1.3 million people spread out across roughly 34,000 square miles. Our State has by far the lowest population density in all of New England. Consequently, continuing to upgrade and improve our roads, highways, and bridges is essential to Maine's future prosperity. It is also a vital part of the economic strategies in our State that are aimed at increasing job opportunities for all of our citizens.

It is my hope that the Federal funding that is included in this legislation will support a strong partnership with the States that will allow us to build, repair, and maintain our surface transportation system into the 21st century.

The bill would also allow us to pursue some high priority transportation projects over the next 6 years. For example, as a native of Aroostook County in northern Maine, I understand how important it is to construct a north-south highway, a modern limited access highway through Aroostook County. This project has been in the works for more than 20 years. The interstate, when it was first constructed, for some reason stopped at Houlton, ME, rather than going through Aroostook County to the Canadian border. For that reason there have been economic development projects underway for some time, calling on us to construct a north-south highway to the Canadian border.

This project has been funded through the preconstruction stages and is currently undergoing the necessary review to complete the required environmental impact statement.

Northern Maine desperately needs the transportation and safety improvements such a highway would bring. For this reason I have made it my top transportation priority since being elected to the Senate in 1996. I hope the higher funding levels authorized by this legislation will enable the State of Maine to continue moving this vitally important project forward to the construction phase.

Just as I believe that the Aroostook highway project is critical for the transportation system and the economy of northern Maine, I also believe that an east-west highway, potentially running from the maritime provinces in Canada through eastern, central, and western Maine, to Quebec and northern New York State would significantly boost economic growth, job creation, and development throughout the entire region. This is an important transportation project, not only for that region of Maine but also for our Canadian neighbors.

Maine, like many other States in the Northeast, is facing an aging transportation infrastructure. It requires maintenance, rehabilitation, and in some cases outright replacement. The most urgent example of this problem is the Waldo-Hancock Bridge, a major suspension bridge that carries U.S. Route 1 over the Penobscot River, south of Bangor, and acts as a gateway to downeast Maine, one of the State's most widely visited regions.

The nearest alternative for crossing the Penobscot River is some 20 miles away in Bangor, and any interruption in the service would thus require a detour of at least 40 miles.

Unfortunately, due to safety concerns, last summer the State Department of Transportation had to lower the weight limits for vehicles using this bridge. The condition of the bridge has been declining steadily for a number of years, and despite efforts by the State to rehabilitate the existing structure, it has now become evident that the bridge must be replaced as soon as possible.

While providing States with adequate funding to move forward with high priority projects such as the east-west highway, the Hancock-Waldo bridge, and the Aroostook highway, as well as the funding of other more routine highway and transit projects as a major focus of this legislation, I also see this bill as an opportunity to address some important transportation safety issues.

The most pressing transportation safety issue in my State has to do with Federal truck weight limits.

Under current law, trucks weighing as much as 100,000 pounds are allowed to travel on Interstate 95 from the border of Maine with New Hampshire, to Augusta, our capital city. At that point, right before Augusta, trucks weighing more than 80,000 pounds are forced off Interstate 95, which proceeds north to Houlton. Heavy trucks are forced onto smaller, secondary roads that pass through our cities, our towns, and our villages.

Augusta is an example of the problems this creates. When the trucks leave the interstate, they frequently travel down Western Avenue to encounter two heavily traveled traffic circles. These traffic circles have some of the highest accident rates in our State, and having these large, heavy trucks travel through the congestion of Western Avenue, around these two traffic circles and then continue on secondary roads poses a serious safety threat.

A uniform truck weight of 100,000 pounds on all of Interstate 95 in Maine would reduce highway miles and travel times necessary to economically and efficiently transport freight throughout Maine that would result in both economic and environmental benefits.

Moreover, Maine's extensive network of State and local roads would be better preserved without the wear and tear of heavy truck traffic. But most importantly, as I indicated with my example of the traffic circles in Augusta, ME, a uniform truck weight limit on the interstate would keep trucks on the interstate, which is designed to handle heavy trucks. That is where they belong rather than on the roads and highways that pass through Maine's cities, towns, and neighborhoods.

Maine's citizens and motorists are needlessly at risk because too many heavy trucks are diverted from the interstate and onto local roads.

Senator SNOWE and I have an initiative to deal with this issue. We hope to work closely with the managers of the bill to address this very important traffic safety issue.

With 3,400 miles of coastline and 14 inhabited islands, there is another very important feature of transportation that affects my constituents. The Federal Highway Administration's Ferry Boat Discretionary Program is vitally important to the Maine State Ferry Service and the Casco Bay Island's Transit District, which provide critical transportation services to Maine's island communities. I have joined with my colleague, Senator MURRAY, and a bipartisan group of Senators in sponsoring the Ferry Transportation Enhancement Act, which would significantly increase funding that is available for ferry projects. We hope to pursue this proposal as the debate on this important legislation continues.

While this highway reauthorization legislation includes funding for traditional transportation programs, I am also pleased that it includes increased funding for both transportation enhancements and the Recreational Trails Program. Both have allowed States to greatly expand their bicycle path systems.

In Maine, for example, 94 bicycle paths and pedestrian walkways have been built with funding from these special programs.

I also believe that it is in our national interest to pursue and strengthen passenger rail services in the United States and to help maintain the solvency of Amtrak, even as we put reforms in place. Currently, there is no long-term stable funding source for passenger rail in the United States. Since 1971, when Amtrak was created, $25 billion has been spent on passenger rail. This contrasts sharply with the $750 billion that has been invested in our highways and aviation.

As the Senate moves forward in considering a wide range of transportation issues and funding questions in this vital bill, I look forward to working with all of my colleagues to make sure we pursue the goal of ensuring that our roads, our highways, and bridges are able to meet the needs of our citizens and commerce as we move forward in the 21st century.

Thank you, Mr. President. I yield the floor.

Mr. DODD. Mr. President. I rise in support of the transit amendment to the highway funding bill.

As a member of the Banking Committee, I commend Chairman SHELBY, Senator SARBANES, and their staffs for their hard work and their willingness to reach consensus on this important measure.

I also commend members of the Finance Committee for also discharging their duty to fully finance the transit spending authorized in the budget. Our Democratic leader, who also sits as a member of that committee, was particularly helpful in that regard.

The legislation passed yesterday by the Banking Committee was no easy achievement. The members of the Banking Committee have different transit needs for their States. There are some Senators on the Banking Committee from mostly rural States, others from States with largely urban centers, and others whose States have a combination of both.

The transit title, which was unanimously approved yesterday in the Banking Committee, goes a long way toward balancing these needs. Although this legislation is not perfect, it does come close to achieving a national transit policy, which is a goal I believe was not achieved in the highway funding portion of the bill.

The transit bill has a number of important provisions:

It provides $56.5 billion for mass transit over the next six years. This amount is a significant investment for the future. I am hopeful that more progress can be made to increase assistance for those regions that rely heavily on mass transit but whose aging infrastructure needs repair and modernization.

If anybody were to deny that a problem exists in this regard, I would urge them to read an article which appeared in yesterday's Stamford Advocate entitled ''Metro-North Struggles To Keep Cars in Service.'' It describes how a combination of cold weather and aging railcars has knocked one-third of the aging New Haven Line out of service for several weeks.

In fact, about 37 percent of the New Haven Line is out of service for maintenance. The Metro-North Line has lost 230 out of its 800-car fleet for repairs. Thousands of commuters in Connecticut rely on this service to get to and from work, travel to and from school, and to see their families.

The legislation devotes significant resources to the Job Access as well as the Elderly and Disabled transit programs, which have been successful in providing transportation services to many of the most vulnerable members of society. Such transportation services enable low-income individuals, as well as senior citizens and the disabled, to have access to jobs, education, and training, which ultimately fosters self-sufficiency and improves their quality of life.

The transit title also includes funds to small communities with significant transit infrastructure that currently do not qualify under existing formula programs. Many cities in Connecticut and throughout the region could benefit from this program.

Finally, I am pleased that the transit amendment includes language I authorized to promote the establishment of medical access programs. Many Americans lack transportation services to take them to the hospital to see a doctor, get medication, or undergo dialysis.

Often their only choice is to call an ambulance, even if it is not truly a medical emergency, because such services are reimbursed under Medicare. By encouraging community transit systems to establish medical access programs, we can reduce costs to Medicare while serving as a lifeline to those Americans in need of health care.

I am hopeful that more progress can be made to increase our investments in mass transit. I am grateful to Chairman SHELBY and Senator SARBANES for listening to other Senator's concerns throughout this process, and I look forward to working with them as this legislation moves forward.

I as unanimous consent to print the article to which I referred in the RECORD.

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

[From the Stamford Advocate, Feb. 4, 2004.]

METRO-NORTH STRUGGLES TO KEEP CARS IN SERVICE

(By Katherine Didriksen)

Metro-North Railroad is bracing for another bout of wintry weather today while it

struggles to fix widespread equipment problems caused by recent bitter cold and drifting snow.

The railroad has been unable to run a regular schedule during peak morning and evening hours for several weeks as more than one-third of its aging New Haven Line fleet has been knocked out of service.

''(The railcars) are just dying faster than we can fix them,'' Metro-North spokeswoman Marjorie Anders said. ''It's cumulative.''

Heavy electrical components, including traction motors and motor alternators, are particularly hard-hit by extreme cold and dusty snow, she said.

Trains have had decent on-time performance despite the car shortages, but customers will face standing-room-only conditions all week, Anders said.

Metro-North has lost 230 railcars out of its 800-car fleet to repairs. The railroad reached a high of 217 disabled railcars on Jan. 21. On the New Haven Line, 126 of 342 railcars, or about 37 percent, are out of service for maintenance.

On an average day, 50 to 60 cars are out of service for maintenance, Federal Railroad Administration-mandated inspections or major repairs, said Harry Harris, chief of the Connecticut Department of Transportation's bureau of public transportation.

''You never run 100 percent of your fleet. You can expect to have about 18 percent out for one reason or another,'' he said. ''When you start reaching 80, 90, 100 cars, you are cutting in substantially to the fleet.''

Today's forecasted wintry mix offers the railroad little time for repairs and presents other challenges. Cold and freezing rain causes problems with equipment on the ground, including track switches, Anders said.

Trains on the New Haven Line will continue to run under a speed restriction overnight to reduce stress on the overhead catenary wires that become brittle and taut in the cold, she said.

''It's getting pretty bleak,'' said Jim Cameron, vice chairman of the Metro-North-Shoreline East Rail Commuter Council. ''They absolutely are desperate for capacity now.''

Commuters are getting increasingly angry and upset, he said.

''My frustration is that they still don't understand the enormity of the situation or who's at fault,'' Cameron said. ''Commuters don't like being kept in the dark, and they don't like being lied to.''

The lack of communication lies on Hartford's shoulders, rather than on the railroad or the state DOT, he said.

Extreme weather is exacerbated by the state's aging equipment. The bulk of the New Haven Line fleet was commissioned in 1973—an average train lifespan is about 20 years—and the catenary wire system was built in the early 1900s.

''It's a real challenge to keep all this equipment going,'' Harris said. Repairs are complicated by a lack of maintenance space and replacement parts, he said.

Connecticut also hosts the only commuter railroad service that runs a dual-powered system of third-rail and overhead catenary wires, Harris said. A new car that fits the dual-powered system has a price tag of $4.5 million, he said.

''There is no quick solution, barring some kind of an economic miracle,'' Harris said. Commuters are not likely to see funds for new railcars until 2006, he said.

In the meantime, Metro-North and the state DOT are merely looking to survive the winter.

''The worst-case scenario is no service,'' Anders said. ''We're not even close to that.''

The railroad alerted passengers to the following timetable alterations through Monday: In the morning rush hour, the 6:42 a.m. train from New Haven, due in Stamford at 7:30 a.m. and arriving at Grand Central at 8:18 a.m.; and the 7:37 a.m. train out of Port Chester, N.Y., due in Grand Central at 8:20 a.m., are canceled.

During the evening rush hour, many trains departing Grand Central will be combined or canceled:

The 4:11 p.m. train from Grand Central to South Norwalk and the 4:16 p.m. train to New Haven are combined, departing at 4:16 p.m.

The 4:49 p.m. train from Grand Central to New Haven will terminate at Stamford. Customers for stations east of Stamford must take the 5:01 p.m. train. Darien passengers must take the 5:04 p.m. train to Danbury.

The 5:09 p.m. train from Stamford to New Canaan and the 5:26 p.m. train to New Canaan are combined, departing at 5:26 p.m.

The 5:23 p.m. train from Grand Central to Bridgeport and the 5:28 p.m. train to South Norwalk are combined, departing at 5:28 p.m.

The 5:44 p.m. train from Grand Central to Bridgeport and the 5:49 p.m. train to South Norwalk are combined, departing at 5:49 p.m.

The 6:37 p.m. train from Grand Central to Harrison, N.Y., and the 6:40 p.m. train to Stamford are combined, departing at 6:40 p.m.

The 7:07 p.m. train from Grand Central to Harrison and the 7:10 p.m. train to Stamford are combined, departing at 7:10 p.m.

For additional information, customers can consult www.mta.info.

Ms. MURKOWSKI. Mr. President, I appreciate the opportunity to say a few words about the highway bill. This legislation is of immense importance not only to my State of Alaska, but to the Nation as a whole. It is unlikely that this Congress will do anything of greater importance for our economy.

We all know that if our economy is our strength, transportation is our circulatory system. Without it, we cannot function. And make no mistake, we are not keeping up with the task.

Thirty-two percent of our major roads are in poor condition. Twenty-nine percent of our bridges need replacement or repair. Urban rail and bus systems are in equally poor shape.

According to the Department of Transportation, we should be spending over $100 billion per year on highways and over $20 billion per year on transit. But we cannot do that. We are constrained by reality. The components of the Senate bill will approximate only half that amount.

That is deeply disappointing to the Nation's 12,500 road construction contractors, and it is deeply disappointing to all our States and to their municipal governments, and to all our constituents.

We do not live in a perfect world. And given that reality, our job is to pass the best bill we can possibly pass.

It was no easy task to develop the bill before us today. We owe a tremendous debt of gratitude to the leaders of the Environment and Public Works Committee for their efforts, and to the leaders of the other committees necessary to make this bill a reality. No one could have worked harder and longer than Senator INHOFE, Senator JEFFORDS, Senator BOND and Senator REID.

Is this a perfect bill? No, indeed. There are many things I would like to see changed. For example, I strongly agree with the comments made by Senator VOINOVICH about the need for additional streamlining so that projects can get off the ground faster.

For my own State, I would like to see greater flexibility in a number of areas. I would also like to see greater recognition given to the fact that my State is far behind all the others in road miles, and that lack is holding back not only our economy but limiting our ability to contribute to the Nation as a whole. This bill does not address that fact to satisfaction.

By the same token, I understand that many of the donor States want to see more of their highway fuel tax dollars returned to them, and returned faster. I cannot blame them. At the same time, I want to remind my colleagues of this very important fact: This bill is not about my roads or your roads. This bill is about our roads.

We are all in this together. Let's not forget that fact.

The bill before us will increase every State's minimum guarantee to the 95 percent level they have long sought. And it will ensure that every State will see a significant increase in real dollars, an average increase of over 35 percent.

We cannot afford not to move forward.

In the last decade, travel on the Nation's highways increased almost 30 percent. By 2020, projections indicate travel will increase by another 50 percent. Those number don't just indicate a need; they demand a response. They demand that we move forward on this bill.

I yield the floor.

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

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

Mr. SHELBY. Mr. President, what is the pending business?

The PRESIDING OFFICER. S. 1072 is the pending business.

AMENDMENT NO. 2269 WITHDRAWN

Mr. SHELBY. Mr. President, I think I have an amendment pending.

The PRESIDING OFFICER. Amendment No. 2269 is pending.

Mr. SHELBY. Mr. President, I ask unanimous consent that I be allowed to withdraw the amendment.

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

Mr. SHELBY. Thank you.

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. VOINOVICH. 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. VOINOVICH. Mr. President, I understand that if I ask that the amendments be set aside so I can send an amendment to the desk and ask for its immediate consideration, there is an objection to that; is that correct?

The PRESIDING OFFICER. There has not yet been an objection.

Mr. VOINOVICH. I did not hear the Chair.

The PRESIDING OFFICER. There is not yet an objection.

Mr. INHOFE. If the Senator will yield, it is my understanding that there will be an objection.

Mr. VOINOVICH. Mr. President, it is unfortunate that we have an objection to further amendments so that we can't set aside some of those that have been here and we are not making the kind of progress I think we should be making on this bill and that some in this body will not allow us to make progress and consider a germane amendment that has broad support. What I am going to do is file the amendment and hopefully get to it in due course.

Two days ago, I came to the floor to express my support for this bill. I praised the managers for their work in putting this compromise together. I said that the bipartisan spirit of this bill led me to believe we could actually get something accomplished, which is contrary to the predictions of many people for this session of Congress. I even borrowed from one of my models when I was Governor: Together we can do it. And together we can. We can get this bill passed if we have enough folks who are willing to compromise and understand there is an enormous need to deal with the infrastructure problems and challenges of our country and also understand the need for the jobs this bill will create in our respective States.

Today and yesterday we have seen, however, that some do not want to work in a bipartisan manner and pass this bill which will put hard-working Americans back to work and jump-start our sluggish economy, particularly in States such as Ohio. This is the case even though 75 Members voted to invoke cloture and proceed to the bill. Sadly, until this logjam is broken, we can't even make progress on issues of broad agreement.

Regardless of these difficulties, I am pleased to announce that this amendment represents an agreement reached by the transportation community and the historic preservation community. I greatly appreciate the work of the many groups that worked on this amendment, including the National Trust for Historic Preservation, Preservation Action, the American Association of State Highway and Transportation Officials. I commend the Ohio Department of Transportation, especially Gordon Proctor, Tim Hill, and Michelle Holdgreve, for their tireless effort. They have worked very hard with us on this amendment. The hard work by all these interested groups have led to this carefully crafted compromise amendment that I believe will go a long way in expediting the time and decreasing the cost of transportation construction projects.

This amendment addresses section 4(f). Section 4(f) of the Department of Transportation Act of 1966 prohibits the Department of Transportation from approving any highway project that uses publicly owned land or a historic site of national, State, or local significance, unless, one, there is no prudent and feasible alternative that avoids such resources or causes less harm to them, and, two, the project includes all possible planning to minimize harm to those resources.

If publicly owned land or a historic site is chosen for use in the project, an evaluation must demonstrate that the use of other alternatives would have resulted in unique problems. ''Unique problems'' are present when there are truly unusual factors, or when the costs to the community's disruption reach ''extraordinary magnitude.'' This test was introduced in Citizens to Preserve Overton Park v. Volpe, referred to as the ''Overton Park criteria.''

Section 4(f) was developed in the late 1960s to address a real problem. Construction of the Interstate Highway System was at its peak, and these projects took the path of least resistance, which, in many cases, was parkland because it was easy to acquire and cheap to build through.

The passage of section 4(f) was intended to protect parks and historic sites that could be adversely impacted by construction of the Interstate System. We all understand that. That makes sense.

Today, however, highway projects are more likely to involve maintenance and modernization of the current system. The problem is that section 4(f), which basically prohibits all use of protected resources, is difficult to apply to projects that would have some, but not significant, impact on a protected resource. Yet this law has never been amended since its creation almost 40 years ago. We need to address our attention to that.

When highway projects have resulted in litigation, section 4(f) has been a frequent cause. Moreover, inconsistent interpretation of the Overton criteria has been identified as one need for changes in section 4(f) to allow for a more balanced interpretation of its requirements. One of the reasons for this litigation is the subjective terms used in the law: ''prudent and feasible,'' ''all possible planning to minimize harm,'' ''unique problems,'' and ''extraordinary magnitude.''

I will tell you, these provisions are a lawyer's dream and a nightmare for the courts that have to interpret it and the States and U.S. Department of Transportation, which has to enforce the law. The result has been needless confusion, significant delays, and high cost for issues that defy common sense. What we are talking about here is common sense.

In my State of Ohio, for example, a privately owned barn was considered eligible for the National Register of Historic Places. It was in the path of a needed road improvement. Let me clarify that the barn was eligible because it was more than 50 years old. Soon, we won't be able to do any improvements because sidewalks will be 50 years old in this country. After considerable delay, needless studies, and significantly increased costs, a decision was made to avoid the barn. The road improvement was rerouted and the barn protected. This is the barn in this photo that we were protecting because it was over 50 years old. Look at that.

The cost to reroute this was $100,000 and 4 months of delay. Anybody who knows about highway projects knows that for every day of delay, it costs money. Time is money. However, the barn fell down due to owner neglect a few years later.

The point is that, while transportation planners have to do all they can to protect something that is ''eligible'' for the register, the private owner of the place, or even another Federal agency, can destroy it without sanction. That just doesn't make any sense.

Section 4(f) was enacted in 1966, 37 years ago. It only applies to the U.S. Department of Transportation, not any other Federal agencies. It is an extremely stringent law that has been interpreted by the courts, as they say, in vastly different ways.

While it was created with good intentions and at a time when the law was arguably needed, U.S. DOT and State departments of transportation have become good stewards of the environment.

One of the things that happens in Washington is we give no credit at all to State organizations or local organizations, in terms of their concern about the environment. So often, we think we are the only ones who really care about the environment.

Section 4(f) requirements have been identified by State departments of transportation as a significant deterrent to timely environmental reviews of transportation projects. The requirements to avoid section 4(f) resources applies in all cases, even when the impact is minor, resulting in situations in which a minor historic property is protected at the expense of other more sensitive environmental resources or communities.

In April of 2003, the General Accounting Office reported the transportation stakeholders consider section 4(f) reviews as burdensome and inflexible and that alternative approaches could protect historic properties and take less time to reach resolution.

In that report, a large majority of the stakeholders indicated that historic property protections under section 106 of the National Historic Preservation Act of 1966 offered a more flexible mediation process. This law requires that Federal agencies consider the effect of properties either in or eligible to be in the National Register of Historic Places. It brings all parties into the discussion and allows for better outcomes that preserve the goals of the transportation project, while protecting historic properties. This concept is included in this compromise amendment.

We are using something with which people are familiar. It worked in other places and it can work in terms of highway construction.

Currently, section 4(f) does not provide exceptions for impacts with no adverse affect or even a beneficial effect. For example, in Ohio, a new highway project adjacent to a publicly owned golf course was being constructed, and the golf course asked if work could be performed to alleviate persistent flooding. However, the work would have required a section 4(f) study. As a result, the work wasn't performed and the golf course still floods to this day just because of this 4(f).

In more extreme cases, projects with very minor impacts on protected sites have had to be realigned at high social, environmental, and economic costs. The peculiarities of the law led to well-documented, unintended consequences.

The confusion over existing law and problems with delays has led to several attempts at remedies. AASHTO, the organization that represents all 50 State transportation departments, voted unanimously to reform section 4(f).

Section 4(f) is also one of the highest priorities of our own U.S. Department of Transportation, which proposed changes to section 4(f) in its surface transportation reauthorization proposal, SAFETEA, which is what we worked off when this bill was being put together.

This amendment remedies many of the problems with section 4(f). While many groups would have preferred greater reform, the final text is a compromise that satisfies major stakeholders in this debate. Again, this was a compromise between a lot of groups, including transportation, environmental, and historic preservation groups.

Specifically, the amendment states that section 4(f) requirements are satisfied if the Secretary makes a finding of de minimis impact to a protected site. For historic sites, such a finding occurs if the project has no adverse effect on a historic site and there is written concurrence from the State or tribal historic preservation officer.

So we go through this process, and it is looked at as de minimis and has to be signed off by the people who care.

For parks, recreation areas, and wildlife and waterfowl refuges, such a finding only occurs if the project will not adversely affect the activities, features, or attributes of the resource, and there is written concurrence from the officials with jurisdiction over the resource. The amendment also requires public notice—the public knows all about this; there is nothing under the table—and public comment on the process. So we vet this decision so everybody knows what is going on.

What is good about this amendment is it allows for better community outcomes. This amendment would require the Secretary, when making a finding of de minimis impact, to consider all ''avoidance, minimization, mitigation, and enhancement measures'' that have been incorporated into the project. The language serves an important function: It builds in an incentive for projects' sponsors to incorporate environmentally protective measures into a project from the beginning, in order to support a finding of de minimis impact. Otherwise, the resource would be avoided and the project would move forward without providing any of the associated benefits to the community.

In addition, the amendment requires the Secretary to promulgate new regulations to determine standards to define whether avoiding a protected resource is prudent and feasible.

The purpose of this amendment is to achieve greater clarity and consistency with regard to the application of the Overton Park standard in a variety of circumstances. Let me provide some examples of problems with the section 4(f). I have already done one. Let's look at others.

In Pennsylvania, the State department of transportation had to make a highway improvement. This project required that one of two farms near each other be sacrificed. One of them was an inactive farm eligible for the registry that was barely maintained and its owner lived out of State. The second was a working farm owned by a man and his two sons who were actively working the land.

The owner of the second farm intended to pass the land down to the family to continue the farming operation. Section 4(f) forced the State department of transportation to demolish the nonhistoric farm, even though it was actively being farmed and planned to be part of the family's livelihood for years to come. In the end, the historic farm was bought and developed.

This is ridiculous. Section 4(f) led to the destruction of both farms. It forced the officials to go against a hard-working family for a rundown farm that happened to be 50 years old. And then this law couldn't even protect it from being developed.

This amendment would at least have allowed the State preservation officer to make a balanced decision considering all of the information and alternatives.

Another good example comes from our neighboring State of Kentucky. A farmhouse and a farm was deemed historic. As a result of the project development process, the best alignment for a four-lane highway was found to be through the property and would separate the historic house from the rest of the farmstead. However, through coordination with historic preservation groups, the highway was realigned so that it would cross in front of the house, impacting only a small strip of land at the front edge of the property.

Everyone involved thought it was great. Then came section 4(f). Section 4(f) required total avoidance of this historic farmhouse. The result was less desirable, more costly, and required the acquisition and removal of a home that was not historic.

In the end, the family whose home was to be relocated bought the historic house from the contractor, tore down the old house, and relocated their modern house where the historic house had stood.

Let's think about this. This is a picture of the historic house. What happened was, they wanted to take a little piece of this property, but oh, no, under section 4(f), you can't do that. Oh, no. So they went across the street to a house more modern and said: We are going to take your property. These people had to relocate their house. They relocated their house. Do you know where they relocated it? They tore the old house down and relocated the modern house to where the old house was located.

That is the kind of result we get from section 4(f). It is understandable that this needs to be changed.

This is a compromise amendment that has broad support and will correct a problem that has plagued State and local officials for nearly 40 years. It is time for this inflexible and outdated law to be fixed.

I congratulate all involved on this work. Again, historic preservation groups came together and said: This is crazy; let's see if we can work something out. And they did it.

I think it is unfortunate this amendment will not be considered today. As I said, it has broad support.

I wish to say one other thing about the highway bill. There is no question that there is an overwhelming need for this legislation. In fact, if you look at the needs that have been projected by the Department of Transportation, the amount of money we are spending doesn't meet the need, but it is a reasonable compromise to start to address forthrightly some of the problems I have in Ohio, you may have in Texas, Mr. President, or the chief sponsor may have in Oklahoma, and around this country.

It also provides needed jobs for people in our respective States. To my knowledge, this is going to be the only jobs bill to come out of this Congress at this time. Those jobs are needed.

I was talking with some of my colleagues the other day and they said: It is not needed and there are no projects out there ready to go. I would like to say that in my State we have $164 million of work that, if the money were

there, could start tomorrow. It could start tomorrow.

The economy in my State is not doing too well. We are getting killed because of manufacturing. We need this bill. There was a great conservative President of the United States named Ronald Reagan. He is on the altar and worshipped by conservatives all across America. He was a real conservative, a real fiscal conservative. In 1983, unemployment was up. I remember because I was mayor of the city of Cleveland. People needed work. Ronald Reagan, in his wisdom, saw a need out in the country. He went to Congress and asked for the emergency jobs bill. That bill extended unemployment benefits. That bill provided moneys to cities and counties.

When I was mayor, we were really hurting. It provided us $12 million for public works so I could put people to work. It provided $6 million to Cuyahoga County. That was Ronald Reagan, a fiscal conservative, a man of compassion. He reached out, saw these people on the unemployment line, saw that jobs were needed. He also understood that we had some real infrastructure needs in this country, and on April 1 of 1983, Ronald Reagan said: I don't want to borrow the money; I don't want to borrow the money to provide more money for highways, and suggested and got the Congress to agree to increase the gas tax by 5 cents.

It seems to me that some of my colleagues—and I consider myself a conservative—ought to look at the reality of all of this. I suggest to our administration, our President, who is compassionate, and his advisers, that they ought to also look at the needs we have.

I went along with a grant to Iraq because I wanted to rebuild their infrastructure, and we are borrowing that money. We are borrowing a lot of money for a lot of purposes. I think Senator GRASSLEY and the Finance Committee have tried to come up with some reasonable ways of paying for this bill and some offsets. Some people may nitpick it, but the fact is, they did genuinely try to do something about it.

Everyone who is concerned about it ought to look at this realistically. This is a very modest, responsible proposal that deals with great infrastructure needs in this country.

I come from a just-in-time State, and our roads and bridges are in bad shape. I come from a State where we have thousands of people who lose their lives because our roads are not what we want them to be—route 24, particularly. So we have these needs. This is not porkbarrel. We have real needs.

On top of that, the frosting on the cake is we need the jobs. I am hoping that the Holy Spirit will enlighten our President and his advisers and Members on my side of the aisle and on the other side of the aisle to do something good for America and get on with this bill, get it passed, and get the money on the street so we can put some people to work and get on with our infrastructure needs.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I have some remarks in conjunction with the statement of Senator VOINOVICH. I will yield to the Senator from Florida as soon as I make a couple of comments.

Mr. President, I rise to speak in favor of the amendment offered by my colleague from Ohio, Senate VOINOVICH. First, I thank him for working so hard on this very important issue. I know this issue has been controversial, and I appreciate his dedication to working out a compromise. Senate VOINOVICH's amendment adds much-needed reforms to a provision in current law commonly referred to as section 4(f) review.

Section 4(f) was approved by Congress as part of the Department of Transportation Act of 1966 to protect public parks, recreation areas, wildlife and waterfowl refuges, and public and private historic sites.

It is important to protect our historic treasures and environmental and recreational resources. Our Government has invested money in establishing and maintaining these resources for the public's use. We should not allow another department to turn around and diminish those investments without good reason.

Unfortunately, court decisions have led to an interpretation of ''avoid at all costs.'' In addition to adding significant time delays caused by extensive study of alternatives, this interpretation has led to some really bad public policy decisions—decisions that defy common sense.

For instance, does it make sense to spend a hundred thousand dollars to shift an alignment in order to avoid an old, abandoned, dilapidated barn? I don't think so, but it has happened. Should private citizens lose parts of their front yards to road expansion so that we can save the supposed parkland between the current road and the ditch that runs alongside it? I don't think so, but it has happened.

Those are just a couple of examples of where section 4(f) is obviously broken and desperately needs to be fixed. I am pleased that Senator VOINOVICH has brought us such a fix.

The State of Oklahoma DOT is pleased with this language. Our folks who actually deal with this issue on a regular basis believe this will help them make better decisions with less delay.

I think this amendment represents good policy all the way around—transportation officials will be able to make commonsense decisions, particularly when it comes to projects that will have minimal impacts, and we can all be assured that these important environmental and cultural resources are protected.

It is my understanding that this language was developed by a wide range of stakeholders, including Ohio DOT, AASHTO, the National Trust for Historic Preservation, Defenders of Wildlife, Environmental Defense and the Natural Resources Defense Council. I commend Senator VOINOVICH for bringing forward this section 4(f) amendment, and I am happy to add my support to it. I regret that we cannot consider his amendment today, but I assure the Senator that I will work to have his amendment adopted.

Mr. President, what my friend from Ohio is saying is what we have been saying since Monday morning.

The Senator is exactly right. I do not know how many times I have stood on this floor and said those of us who are conservatives historically have to stop and look at what is Government here for. Conservatives are generally big spenders when it comes to defense, when it comes to infrastructure. We need to defend America and we need infrastructure. Right now, I am sure there are some States that are not as sensitive as the Senator from Ohio and I are because they do not have the problems, but when we look at what this bill is doing to try to correct the problem of, just as an example, our deteriorating bridges, my State of Oklahoma ranks dead first in terms of the deteriorated condition of bridges, and I chair the committee.

We are going to have to get a bill through. There has been some recent suggestion that it be pared down a little bit. I can assure my colleagues the figure we are talking about right now is a figure that is not acceptable to those on the other side of the Capitol, and this is the only way we can get one.

I thought we were making some headway. We have all of these little procedural hurdles. We are not able to send the amendment of the Senator to the desk, but I will tell the Senator right now I am going to do what I can about it.

First, I do agree with the Senator's amendment and I know how hard he has been working on it. A lot of people do not realize this section was approved by the Congress as part of the Department of Transportation Act of 1966. It is obvious it is not working now and we need to do something about it. Certainly the Senator is as enthusiastic about protecting any of our historical sites as we are, but we need to have something that is workable.

I know there is someone else who wants to speak, but let me give the Senator my assurance, as chairman of the committee, I will do everything I can to make sure he gets his amendment in, which I support. More important than his amendment, we want to get this bill passed so we can get America back to work again.

Remember, not long ago one of the publications in the Capitol had a ''men working'' sign on it, and they put a ''not'' right in the middle: Men not working. That is exactly what is happening right now. If we play around

with the reductions, with the temporary extensions and all of that, we are not going to be able to get people back to work.

We have the infrastructure needs. We have the needs for jobs, and I will be there beside the Senator from Ohio doing what I can to make that a reality.

Before I yield the floor, let me ask my good friend with whom I was privileged to share this morning's chairmanship at the National Prayer Breakfast—one of the truly great moments of my life with my good friend. We are trying to stay on the highway bill. We have others who are going to be coming down. Could I inquire as to how much time the Senator from Florida would like to have?

Mr. NELSON of Florida. Probably no more than 8 or 10 minutes.

Mr. INHOFE. I ask unanimous consent that he be given 15 minutes and then after I be recognized as having the floor.

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

The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I commend the Senator from Oklahoma. It has been a pleasure working with him as the cochairman of our Senate prayer breakfast, and now having the opportunity this morning with 4,000 people assembled at the Washington Hilton to cochair the National Prayer Breakfast with him—which really is a misnomer because it is an international prayer breakfast. We had people from 150 nations. We had five heads of state there. Of course, we had dual speakers this morning in the persons of former Congressman J.C. Watts and Congressman JOHN LEWIS. They were both riveting. I appreciate his collegiality and considerable cooperation as we entered into this delightful once-a-year event that occurs in Washington.

I say to the Senator from Ohio, though, before he walks out the door, that as he was talking about the transportation bill providing jobs, we have a saying in the south: ''Amen, brother.'' We need the jobs in Florida, too. Indeed, they are needed all over the country and that is why I will support this bill, and that is why I did.

I congratulate the chairman and the ranking member of the committee in how they have fashioned this bill. There are parts of this bill I would like to see improved. For years, my State of Florida has given a dollar in in tax and only gotten back about 80 cents. Over the years, my senior colleague, Senator GRAHAM of Florida, has been working on that. Since I have been in the Senate the last 4 years, I have been working with him to improve that. We have got that ratio up to 90.5 percent that we get back for every dollar we send.

In the bill the chairman and the ranking member have crafted, over the 6-year period that will rise to 95 percent. Floridians will be very grateful for that. I wish it could rise 1 percent a year over those 6 years instead of the way it is crafted, which is that it stays at a 90.5 percent return on Florida's tax dollar and then it jumps in the sixth year to 95 percent return on the dollar, but that was part of the give and take.

I would certainly like to improve it, but I am grateful for it, because finally this battle Florida has had for ages in getting a return on its tax dollar, particularly a gas tax dollar it sends to the Federal Government, is going to get some equalization, particularly with other States that have in the past gotten in excess of a dollar's worth when they send in a dollar to the Federal gas tax trust fund. I have lots of good things to say about it, but, oh, does it make it tough in this environment in which we are, a highly charged partisan environment in an election year in which the deficit that was just announced 3 days ago is over a half a trillion dollars.

Now, deficit is a fancy word, but let me say to my colleagues simply what I think it means. It means if we are spending this much in this coming fiscal year, but we only have this much coming in in tax revenues, the difference, since we are spending more than we have coming in in revenue, is the deficit. That has been estimated, in the President's budget, at $525 billion. That is over a half trillion dollars.

Well, what does one do? Where does it come from? If spending is going to be here, but the tax revenues are only here in a given year, what is to be done? The difference is borrowed, and that difference then, when borrowed, is added to the national debt.

We can see if we are borrowing to the extent of over half a trillion dollars a year, it does not take too long to see the national debt just continue to go out of sight, and then on that debt we have to pay interest. When the interest rates go up after this year, then that is another big slug out of the Federal budget we will have to pay, interest on the national debt.

Goodness gracious. And think what we could be doing with money: $200 billion a year in interest. Think what that would buy in the programs that are being cut under this President's budget. These are programs such as law enforcement assistance from the Federal Government such as the COPS program, putting police on the beat, on the street. That is being cut. Education expenditures are being cut. Children's health programs are being cut. Environmental programs are being cut. I could go on.

Yet that creates the environment, the fiscal reality, that in times of huge budget deficits, if you are going to get that figure from here to match your revenues, you either have to cut spending or raise taxes or, in the alternative, stop tax cuts that are projected to go into effect in the future and don't let them go into effect, or both, in order to get your Federal budget into balance.

We had a chance 3 years ago. We were in a surplus situation with so much surplus projected over 10 years. We could have paid off the national debt if we had been wise and conservative in our approach. But we didn't. We went and blew it. We were like drunken sailors, spending and enacting tax cuts that were targeted to the more well off among us. The result is what the President's budget just said. In the budget that was just released, the deficit spending this next fiscal year is going to be over half a trillion dollars.

This is not conservative fiscal policy. This is wild and reckless policy. When you give a continued tax cut to the rich to be financed by out and out borrowing, that is not conservative fiscal policy. That is out of control fiscal policy.

By the way, guess where we borrow that money. We borrow it from Social Security recipients, because we are taking it out of the Social Security trust fund. Guess where else we borrow it. We borrow it from other countries and their companies and their investors. You think it is just you and I who buy U.S. Treasury bills? Some of us do. And we borrow it from us. But you would be shocked to know how much of the Nation's debt and the new borrowing that will occur is being bought up by corporations and governments in China and Japan. If they end up having a good bit of our debt that is owed to them, what does that do toward putting us in a vulnerable position in the future with regard to our foreign policy with those countries, China and Japan? If they own a lot of our debt or, put another way, if we owe them a lot of money, that is not a position in which I think America ought to be.

There are some clever little tricks in this budget, too. They are very technical. For example, one provision is that people are encouraged, if the President's proposal is enacted, to take money out of their individual retirement accounts, IRAs, or their 401(k) plans and put them over into basically a privatizing of Social Security accounts. But the little fiscal sleight of hand is that when you take it out of an IRA, you are going to have to pay taxes on it. Lo and behold, that gins up an additional $15 billion over this 5-year projection in the budget of new tax revenue, to make it appear as if there is going to be more revenue coming in than there is.

This is really not an economic document. It is a political document. Unfortunately, it is a political document that is not a conservative political document. So I am looking forward to us getting our fingers into this budget and beginning to pick it apart. But what it does when you have a budget this much out of control is it makes it so much more difficult for very important programs such as this transportation bill that will provide so many jobs, that will cause dollars to be spent and circulated and restore the economy—it causes it to be a very difficult time in which to enact this kind of legislation, particularly at the level that some of us would like.

Mr. President, I wanted to share my thoughts on this subject.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I appreciate the statement of my friend from Florida.

I would say, in terms of who the villain is in the deficit we are facing right now, there are two big villains. One is the war, and then the economy. As we started losing economic ground, a downturn back in March of 2000, people didn't realize for every 1 percent change in economic activity it translated into $45 billion in revenue. In other words, as the economy is rebounding now, the revenue is coming back up. Even continuing in the effort, the war effort—which I am afraid is going to last for quite a while—we are going to be facing end strength problems and that will have to go on.

I believe the best thing we can do is do it through the economy. At the same time there are certain things that have to happen in America. We have to do something about roads in America. I probably have as many townhall meetings as anyone. I suggest the Senator from Florida does, too. I can't remember one I have had where they haven't said something about roads.

In Oklahoma what they say is, we can always tell when we are around Thanksgiving time, when we have family coming in, we have friends coming in, we can always know when we get to Oklahoma because of the roads. I add to the Presiding Officer, when they come from Texas they make that comment about Oklahoma roads. So we do have a very serious problem. It seems to be more serious in my State.

Part of that is due to the donor status we have had for quite some time. Of course, we have not had the money with which to do it. I feel an obligation, and believe it is very appropriate for conservatives, to get out and vote in favor of this type of an infrastructure program. This translates directly into jobs, translates directly into the economy, translates directly into increasing economic activity and additional revenue that will come into Government.

With that, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. INHOFE. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

One such crime occurred in Greenwich Village, NY. There, a 36-year-old man was assaulted by a group of 15 men on his way to a gay bar. Another man on the street yelled an anti-gay slur, and when the victim turned to see who had yelled at him, he was punched in the back of the head.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

TAIWAN'S PEACE REFERENDUM

Mr. ALLEN. Mr. President, for the past 54 years, Taiwan and the United States have been allies in the international arena, democratic partners and friends. In times of need and turmoil, both countries have always come to each other's aid. In the aftermath of the September 11 terrorist attacks, Taiwan immediately offered help to Americans through the U.S. Government. In recent months, Taiwan has offered humanitarian aid to post-war Iraq.

Today Taiwan is being threatened. Taiwan's planned referendum on March 20, 2004 has been called a move toward Taiwan independence. Some say it will push Taiwan to the ''abyss of war.'' Such rhetoric is a distortion of Taiwan's true intentions. In the face of an overwhelming military threat against Taiwan, Taiwan President Chen Shuibian's peace referendum asks Taiwan voters whether they should buy more anti-missile weapons if the People's Republic of China refuses to withdraw its 496 missiles targeted at Taiwan and whether Taiwan should open up talks with the People's Republic of China about issues of peace.

Taiwan's democratically elected president, President Chen, has made it clear that he continues to hold to the ''five no's'' of his inauguration speech, including the promise not to hold a plebiscite on the issue of Taiwanese independence. The referendum merely aims to avoid war, free its people from fear and maintain the status quo.

Taiwan, our ally and friend, is a democracy. Its people have every right to hold their referendum this March 20. Taiwan's referendum law is a basic democratic right that the United States should support rather than denigrate. The future of Taiwan must be determined peacefully, with the express consent of the people of Taiwan. Since its establishment, the United States has been the foremost champion of liberty and democracy in the world. We can, therefore, not afford to tell the people of Taiwan not to hold a referendum. There can be no double standard when it comes to exercising democracy.

ADDITIONAL STATEMENTS

TRIBUTE TO RONALD C. FOSTER

• Mr. CHAMBLISS. Mr. President, I pay tribute to Ronald C. Foster who will soon be retiring after an illustrious 33-year career with one of America's leading companies, the Atlanta-based United Parcel Service, UPS. First hired in October of 1966, Ron's 33-year corporate career led him from Kentucky to Colorado, Illinois, Indiana, New York, Pennsylvania, and ultimately to Washington, DC.

Ron started his career as a non-management hourly employee unloading UPS tractor-trailers in Lexington, KY. Promoted to the ranks of management 2 years later, Ron worked in UPS operations while attending the University of Kentucky, where he earned a Bachelor's Degree in Economics in 1972.

Ron held a series of managerial positions of increasing responsibility within the UPS Human Resources department which led him to become one of the company's senior Human Resources officials. In 1996, Ron Foster transferred to UPS' Washington, DC, Public Affairs office, where he represented the company on Capitol Hill and focused on labor relations, safety and human resources related public policy issues. At the time of his retirement Ron served as one of the company's most senior Public Affairs executives, as he coordinated the legislative and political activities of UPS Public Affairs managers both in Washington and in select state capitals.

Ron Foster's accomplished business career has been most noted for his unwavering loyalty to UPS and to his uncompromised dedication to integrity regarding business ethics and values. Ron will be remembered for the respectful and professional manner in which he treated all UPS colleagues. Ron's ability to deal fairly and equitably with people from all walks of life, a trait that is all too uncommon in today's society, was legendary among the UPS family.

Ron has been a very good friend to this Senator and I am happy that he will be spending his retirement years at Reynolds Plantation in Greensboro, GA. I congratulate Ron for a lengthy and highly successful business career, and more importantly, to wish Ron and Jo Foster a healthy and happy retirement.•

HERB BROOKS

• Mr. COLEMAN. Mr. President, I am proud to recognize and pay tribute to my good friend, a great Minnesotan, and a real American hero, the late Herb Brooks, whose memory, accomplishments, and contributions are being memorialized today for all time in St. Paul.

Herb Brooks and I cam from two different worlds. I am so glad I got to know him in this place. Like a lot of sports fans, he gave me the greatest spectator moment of my life in Lake Placid. But what he has taught me about life is so much more significant.

Herb was a son of the East Side of Saint Paul. It's neighborhood that has produced mayors, Governors, and two Supreme Court justices. I wonder if there is a neighborhood that has touched more lives for good than the East Side.

Herb had a lot to say, and not all of it would go in a PG movie. He told his hockey team, ''Gentlemen, we're not talented enough to win on talent alone.'' That was pretty autobiological, I think.

Tonight, we in Minnesota, Herb's home State that loved him so much, have the honor to unveil a permanent tribune to Herb's remarkable career, a career devoted not only to athletic excellence, but character and integrity. Then, we get to relive and relish the moment that reminded all Americans to start believing in miracles again at a screening of the new Hollywood feature film ''The Miracle,'' based on the USA hockey team's shining moment in Lake Placid under Herb Brooks.

I learned a great deal about leadership from Herb Brooks. He was not a man of many words, but when Herb spoke, people listened, because what he had to say was always profound.

More importantly than what Herb said was what he did. He was the kind of leader we need more of, the kind that leads by example. Herb Brooks lived an amazing, remarkable life. He is a hero of mine, and was to millions of other Americans.

But what summed Herb Brooks up for me was this Brooksism: ''Everybody is important, but not too important.'' That was how he articulated his team concept.

If we could all go through life seeing every person we meet as important and not seeing ourselves as too important—who knows, maybe there would be a lot more miracles.

Herb will always be remembered in the hearts and minds of my fellow Minnesotans. But tonight we unveil a statue—in a city that Herb loved and loved him back—that will forever immortalize Herb Brooks's image in Minnesota history. This is a wonderful tribute, and one I am deeply honored to be a part of.•

FIGHTIN' BLUE HENS CELEBRATE NATIONAL FOOTBALL CHAMPIONSHIP

• Mr. BIDEN. Mr. President, in my 33 years as a U.S. Senator from Delaware, I have had the opportunity to give hundreds of speeches on the Senate floor, but today is a first. It gives me tremendous pride today to officially congratulate my alma mater, the University of Delaware, on winning its first-ever NCAA Division I–AA National Football Championship.

Players, fans, and students will celebrate this milestone in the University of Delaware's history at a rally on Tuesday, February 10, 2004, at the Bob Carpenter Center. And we have much more than the national championship to celebrate. The Fightin' Blue Hens played one of the most outstanding seasons in college football history, with a record of 15 and 1 and setting a school record for victories in a season.

After clinching their seventh Atlantic 10 Football Conference championship, the 2003 squad sailed through the Division I–AA playoff, outscoring opponents by a combined score of 149 to 23. In fact, they won the championship game by shutting down Colgate 42 to 0. You can be sure I attended every playoff game, along with tens of thousands of other devoted Blue Hen fans.

As I said earlier, this marks the University of Delaware's first Division I–AA title crown, but we earned six other football titles as a Division II school. The last Division II title in 1979 was significant because our current coach, K.C. Keeler, played on that 1979 championship team as a linebacker.

In just his second year at the helm of UD football, K.C. Keeler took his team to the national championship; but, K.C. is the first to give his predecessor, legendary Hall of Fame coach Tubby Raymond, all the credit for recruiting and building this team. Tubby, this championship is yours, too.

To be sure, UD football has come a long way since the 1960s when I was at the University. But at a time when we all need some good news, the 2003 University of Delaware football team has given our State plenty to cheer about. My warmest congratulations to the coaches, players, parents, school officials, cheerleaders, marching band members, students, and, of course, the diehard fans, as we celebrate being national football champions.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate communities.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 10:57 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3030. An act to amend the Community Service Block Grant Act to provide for quality improvements.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 355. Concurrent resolution congratulating the University of Delaware men's football team for winning the National Collegiate Athletic Association I–AA national championship.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 3030. An act to amend the Community Service Block Grant Act to provide for quality improvements; to the Committee on Health, Education, Labor, and Pensions.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 355. Concurrent resolution congratulating the University of Delaware men's football team for winning the National Collegiate Athletic Association I–AA national championship; to the Committee on the Judiciary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–6167. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a vacancy and designation of acting officer for the position of Secretary, Department of Housing and Urban Development received on January 20, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–6168. A communication from the Assistant Director, Legislative and Regulatory Activities Division, Comptroller of the Currency, transmitting, pursuant to law, the report of a rule entitled ''Rules, Policies, Procedures for Corporate Activities'' received on January 20, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–6169. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determination; 68 FR 69961'' (44 CFR Part 67) received on January 20, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–6170. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determination; 68 FR 69323'' (44 CFR Part 65) received on January 20, 2004;

to the Committee on Banking, Housing, and Urban Affairs.

EC–6171. A communication from the Acting General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determination; 68 FR 69959'' (Doc. # FEMA–P–7630) received on January 20, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–6172. A communication from the President of the United States, transmitting, pursuant to law, a report relative to the continuation of the national emergency with respect to terrorists who threaten to disrupt the Middle East Peace Process; to the Committee on Banking, Housing, and Urban Affairs.

EC–6173. A communication from the Chief Counsel, Bureau of the Public Debt, Treasury Department, transmitting, pursuant to law, the report of a rule entitled ''31 CFR Part 363, Regulations Governing New Treasury Direct System'' received on January 20, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–6174. A communication from the Chair, Barry M. Goldwater Scholarship and Excellence in Education Foundation, transmitting, pursuant to law, the Annual Report of the activities of the Goldwater Foundation; to the Committee on Health, Education, Labor, and Pensions.

EC–6175. A communication from the Assistant General Counsel, Regulatory Services Division, Office of Elementary and Secondary Education, transmitting, pursuant to law, the report of a rule entitled ''Title I—Improving the Academic Achievement of the Disadvantaged'' (RIN1810–AA95) received on January 20, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6176. A communication from the Assistant Secretary for Administration and Management, Department of Labor, transmitting, pursuant to law, the report of a nomination confirmed for the position of Deputy Secretary of Labor, Department of Labor, received on January 20, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6177. A communication from the Assistant Secretary for Administration and Management, Department of Labor, transmitting, pursuant to law, the report of a nomination confirmed for the position of Solicitor of Labor, Department of Labor, received on January 20, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6178. A communication from the Assistant Secretary for Administration and Management, Department of Labor, transmitting, pursuant to law, the report of a designation of acting officer and nomination for the position of Assistant Secretary for Public Affairs, Department of Labor, received on January 20, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6179. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Skin Protectant Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment'' (RIN0910–AA01) received on January 22, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6180. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format'' (RIN0910–AB91) received on January 22, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6181. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Neurological Devices; Classification of Human Dura Matter'' (Doc. No. 200N–0370) received on January 22, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6182. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Food Additives Permitted for Direct Addition to Food for Human Consumption; Acesulfame Potassium'' (Doc. No. 2002F–0220) received on January 22, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6183. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''HIPAA Administrative Simplification; Standard Unique Health Identifier for Health Care Providers'' (RNI0938–AH99) received on January 27, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6184. A communication from the Regulations Coordinator, OGC, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Implementation of Equal Access to Justice Act in the Agency Proceedings'' received on January 27, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–6185. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Study of the Impact of Boren Amendment Repeal''; to the Committee on Health, Education, Labor, and Pensions.

EC–6186. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report of real property transferred for public health purposes; to the Committee on Health, Education, Labor, and Pensions.

EC–6187. A communication from the Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, transmitting, pursuant to law, the report of a rule entitled ''Exportation of Liquors; Recodification of Regulations; Administrative Changes Due to the Homeland Security Act of 2002'' (RIN1513–AA76) received on February 3, 2004; to the Committee on the Judiciary.

EC–6188. A communication from the Associate General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Inmate Discipline: Prohibited Acts: Change in Code Numbers for Agency Tracking Purposes Only'' (RIN1120–AA78) received on January 27, 2004; to the Committee on the Judiciary.

EC–6189. A communication from the Associate General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Incoming Publications: Softcover Materials'' (RIN1120–AA15) received on January 27, 2004; to the Committee on the Judiciary.

EC–6190. A communication from the Associate General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Incoming Publications: Nudity and Sexually Explicit Material or Information'' (RIN1120–AA59) received on January 27, 2004; to the Committee on the Judiciary.

EC–6191. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report on the implementation of Section 428 of the Homeland Security Act of 2002; to the Committee on the Judiciary.

EC–6192. A communication from the Public Printer, Government Printing Office, transmitting, the Office's Annual Report for Fiscal Year 2003; to the Committee on Rules and Administration.

EC–6193. A communication from the Chairman, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Explanation and Justification for Revised Instructions for FEC Form 1M, Notification of Multicandidate Status'' received on January 20, 2004; to the Committee on Rules and Administration.

EC–6194. A communication from the Secretary of Veterans' Affairs, transmitting, the Department of Veterans' Affairs Special Medical Advisory Group's Annual Report to Congress for Fiscal Year 2003; to the Committee on Veterans' Affairs.

EC–6195. A communication from the Inspector General, General Services Administration, transmitting, the report of the Office of Inspector General for the period ending September 30, 2003; to the Committee on Governmental Affairs.

EC–6196. A communication from the General Counsel, Federal Retirement Thrift Investment Board, transmitting, pursuant to law, the report of a rule entitled ''Final Rule 5 CFR Parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1650, 1651, 1653, 1655, 1690: Employee Elections to Contribute to the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds from the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous'' received on January 20, 2004; to the Committee on Governmental Affairs.

EC–6197. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, the Fiscal Year 2003 Annual Performance and Accountability Report; to the Committee on Governmental Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. CANTWELL:

S. 2051. A bill to promote food safety and to protect the animal feed supply from bovine spongiform encephalopathy; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. HUTCHISON:

S. 2052. A bill to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail; to the Committee on Energy and Natural Resources.

ADDITIONAL COSPONSORS

S. 557

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S . 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 1109

At the request of Mr. TALENT, the name of the Senator from Minnesota

(Mr. DAYTON) was added as a cosponsor of S. 1109, a bill to provide $50,000,000,000 in new transportation infrastructure funding through Federal bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, rail, transit, aviation, and water, and for other purposes.

S. 1345

At the request of Mrs. MURRAY, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1345, a bill to extend the authorization for the ferry boat discretionary program, and for other purposes.

S. 1630

At the request of Mrs. DOLE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1630, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral services, and for other purposes.

S. 1703

At the request of Mr. SMITH, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1703, a bill to amend the Internal Revenue Code of 1986 to provide a credit against income tax for expenditures for the maintenance of railroad tracks of Class II and Class III railroads.

S. 2040

At the request of Mr. MCCAIN, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 2040, a bill to extend the date for the submittal of the final report of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes.

S. RES. 164

At the request of Mr. ENSIGN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. Res. 164, a resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. CANTWELL:

S. 2051. A bill to promote food safety and to protect the animal feed supply from bovine spongiform encephalopathy; to the Committee on Agriculture, Nutrition, and Forestry.

Ms. CANTWELL. 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. 2051

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 ''Animal Feed Protection Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) BSE.—The term ''BSE'' means bovine spongiform encephalopathy.

(2) COVERED ARTICLE.—

(A) IN GENERAL.—The term ''covered article'' means—

(i) feed for an animal;

(ii) a nutritional supplement for an animal;

(iii) medicine for an animal; and

(iv) any other article of a kind that is ordinarily ingested, implanted, or otherwise taken into an animal.

(B) EXCLUSIONS.—The term ''covered article'' does not include—

(i) an unprocessed agricultural commodity that is readily identifiable as nonanimal in origin, such as a vegetable, grain, or nut;

(ii) an article described in subparagraph (A) that, based on compelling scientific evidence, the Secretary determines does not pose a risk of transmitting prion disease; or

(iii) an article regulated by the Secretary that, as determined by the Secretary—

(I) poses a minimal risk of carrying prion disease; and

(II) is necessary to protect animal health or public health.

(3) SPECIFIED RISK MATERIAL.—

(A) IN GENERAL.—The term ''specified risk material'' means—

(i) the skull, brain, trigeminal ganglia, eyes, tonsils, spinal cord, vertebral column, or dorsal root ganglia of—

(I) cattle and bison 30 months of age and older; or

(II) sheep, goats, deer, and elk 12 months of age and older;

(ii) the intestinal tract of a ruminant of any age; and

(iii) any other material of a ruminant that may carry a prion disease, as determined by the Secretary, based on scientifically credible research.

(B) MODIFICATION.—The Secretary shall conduct an annual review of scientific research and may modify the definition of specified risk material based on scientifically credible research (including the conduct of ante-mortem and post-mortem tests certified by the Secretary of Agriculture).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 3. PROTECTION OF ANIMAL FEED AND PUBLIC HEALTH.

It shall be unlawful for any person to introduce into interstate or foreign commerce a covered article if the covered article contains—

(1)(A) specified risk material from a ruminant; or

(B) any material from a ruminant that—

(i) was in any foreign country at a time at which there was a risk of transmission of BSE in the country, as determined by the Secretary of Agriculture; and

(ii) may contain specified risk material from a ruminant; or

(2) any material from a ruminant exhibiting signs of a neurological disease.

SEC. 4. ENFORCEMENT.

(a) COOPERATION.—The Secretary and the heads of other Federal agencies, as appropriate, shall cooperate with the Attorney General in enforcing this Act.

(b) DUE PROCESS.—Any person subject to enforcement action under this section shall have the opportunity for an informal hearing on the enforcement action as soon as practicable after, but not later than 10 days after, the enforcement action is taken.

(c) REMEDIES.—In addition to any remedies available under other provisions of law, the head of a Federal agency may enforce this Act by—

(1) seizing and destroying an article that is introduced into interstate or foreign commerce in violation of this Act; or

(2) issuing an order requiring any person that introduces an article into interstate or foreign commerce in violation of this Act—

(A) to cease the violation;

(B)(i) to recall any article that is sold; and

(ii) to refund the purchase price to the purchaser;

(C) to destroy the article or forfeit the article to the United States for destruction; or

(D) to cease operations at the facility at which the article is produced until the head of the appropriate Federal agency determines that the operations are no longer in violation of this Act.

(d) CIVIL AND MONETARY PENALTIES.—The Secretary is directed to promulgate regulations on the appropriate level of civil and monetary penalties necessary to carry out the provisions of this Act, within 180 days following enactment of this Act.

SEC. 5. TRAINING STANDARDS.

The Secretary, in consultation with the Secretary of Agriculture, shall issue training standards to industry for the removal of specified risk materials.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $5,000,000 to carry out this Act.

SEC. 7. EFFECTIVE DATE.

This Act takes effect on the date that is 180 days after the date of enactment of this Act.

By Mrs. HUTCHISON:

S. 2052. A bill to amend the National Trails System Act to designate El Camino Real de Los Tejas as a National Historic Trail; to the Committee on Energy and Natural Resources.

Mrs. HUTCHISON. Mr. President, I rise today to introduce legislation to recognize the oldest highway in Texas and establish the El Camino Real de Los Tejas National Historic Trail.

This bill will preserve a vital piece of Texas history for generations to come. The El Camino Real trail established a key corridor for settlers, immigrants and militaries helping lay the groundwork for our state's future. It also served as a path for such Texas heroes as Davy Crockett and Sam Houston who both fought in the struggle for Texas independence from Mexico.

The 300-year-old corridor also served as a critical trade route, a post road, cattle trail and a military highway. The trail opened America to Texas and Texas to the world. Still today the trail collectively represents a series of roads and paths extending more than 2,500 miles in length from the Rio Grande River near Eagle Pass and Laredo through San Antonio, Bastrop, and Nacogdoches, Texas to Natchitoches, Louisiana. While 2,500 miles of the trail are in 40 Texas counties, the last 80 miles are in Louisiana.

The El Camino Real served as a strategic corridor during Texas' struggle for independence. Critical supplies made their way via the El Camino Real for the Republic of Texas Army as they victoriously forged ahead to defeat the Mexican Army in the Texas Revolution.

This legislation will recognize the significance of the El Camino Real and preserve its historic importance, as well as direct the National Park Service to establish the El Camino Real trail as a National Historic Trail. It will also allow our state agencies such as the Texas Historical Commission to participate in the establishment and designation of the trail, while protecting the private property of landowners along its route. This legislation will allow Texans and the thousands who visit our state each year to learn more of the rich history that forged the Lone Star State.

I am proud to offer this legislation to pay homage to an important piece of Texas and U.S. History, and I urge my colleagues to support the El Camino Real de Los Tejas National Historic Trail Act.

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. 2052

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 ''El Camino Real de los Tejas National Historic Trail Act of 2004''.

SEC. 2. AUTHORIZATION AND ADMINISTRATION.

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended by adding at the end the following:

''(23) EL CAMINO REAL DE LOS TEJAS.—

''(A) IN GENERAL.—Subject to subparagraph (B), El Camino Real de los Tejas (The Royal Road of historic Tejas) National Historic Trail, a combination of historic routes totaling 2,580 miles in length from the Rio Grande near Eagle Pass and Laredo, Texas, to Natchitoches, Louisiana, and including the Old San Antonio Road, as generally depicted on the maps entitled 'El Camino Real de los Tejas', contained in the report prepared pursuant to subsection (b) entitled 'National Historic Trail Feasibility Study and Environmental Assessment: El Camino Real de los Tejas, Texas-Louisiana', dated July 1998. The National Park Service is authorized to administer designated portions of this trail system as a national historic trail as set forth in this paragraph.

''(B) ESTABLISHMENT.—

''(i) PUBLICLY OWNED LANDS.—Congress authorizes the establishment of El Camino Real de los Tejas national historic trail and the respective administration on those portions of the historic trail routes and related historic sites within publicly owned lands when such trail related resources meet the purposes of this Act or certification criteria set by the Secretary of the Interior per section 3(a)(3) of this Act.

''(ii) PRIVATELY OWNED LANDS.—Congress authorizes the establishment of El Camino Real de los Tejas national historic trail and the respective administration on those portions of the historic trail routes and related historic sites within privately owned lands only through the voluntary and expressed consent of the owner and when such trails and sites qualify for certification as officially established components of the national historic trail. The owner's approval of a certification agreement satisfies the consent requirement. Certification agreements are not legally binding and may be terminated at any time. Should land ownership change at a certified site, the certification will cease to be valid unless the new owner consents to a new agreement.

''(C) PRIVATE PROPERTY RIGHTS PROTECTION.—Nothing in this Act or in the establishment of any portion of the national historic trail authorizes any person to enter private property without the consent of the owner. Nothing in this Act or in the establishment of any portion of the national historic trail will authorize the Federal Government to restrict private property owner's use or enjoyment of their property subject to other laws or regulations. Authorization of El Camino Real de los Tejas National Historic Trail under this Act does not itself confer any additional authority to apply other Federal laws and regulations on non-Federal lands along the trail. Laws or regulations requiring public entities and agencies to take into consideration a national historic trail shall continue to apply notwithstanding the foregoing. Notwithstanding section 7(g) of this Act, the United States is authorized to acquire privately owned real property or an interest in such property for purposes of the national historic trail only with the consent of the owner of such property and shall have no authority to condemn or otherwise appropriate privately owned real property or an interest in such property for the purposes of El Camino Real de los Tejas National Historic Trail.

''(D) COORDINATION OF ACTIVITIES.—The Secretary of the Interior may coordinate with United States and Mexican public and nongovernmental organizations, academic institutions, and, in consultation with the Secretary of State, the Government of Mexico and its political subdivisions, for the purpose of exchanging trail information and research, fostering trail preservation and educational programs, providing technical assistance, and working to establish an international historic trail with complementary preservation and education programs in each nation.

''(E) CONSULTATION.—The Secretary of the Interior shall consult with appropriate State agencies in the the planning, development, and maintenance of El Camino Real de los Tejas National Historic Trail.''.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2269. Mr. SHELBY proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

SA 2270. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2271. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2269. Mr. SHELBY proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

TITLE III—PUBLIC TRANSPORTATION

SEC. 3001. SHORT TITLE.

This title may be cited as the Federal Public Transportation Act of 2004.

SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY.

(a) AMENDMENTS TO TITLE 49.—Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) UPDATED TERMINOLOGY.—Except for sections 5301(f), 5302(a)(7), and 5315, chapter 53, including the chapter analysis, is amended by striking ''mass transportation'' each place it appears and inserting ''public transportation''.

SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.

(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—Section 5301(a) is amended to read as follows:

''(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the economic interest of the United States to foster the development and revitalization of public transportation systems that maximize the efficient, secure, and safe mobility of individuals and minimize environmental impacts.''.

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended—

(1) by striking ''70 percent'' and inserting ''two-thirds''; and

(2) by striking ''urban areas'' and inserting ''urbanized areas''.

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended—

(1) by striking ''an urban'' and inserting ''a''; and

(2) by striking ''under sections 5309 and 5310 of this title''.

(d) GENERAL PURPOSES.—Section 5301(f) is amended—

(1) in paragraph (1)—

(A) by striking ''improved mass'' and inserting ''improved public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(2) in paragraph (2)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(3) in paragraph (3)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public or private mass transportation companies'' and inserting ''public transportation companies or private companies engaged in public transportation''; and

(4) in paragraph (5), by striking ''urban mass'' and inserting ''public''.

SEC. 3004. DEFINITIONS.

Section 5302(a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G)(i), by inserting ''including the intercity bus portions of such facility or mall,'' after ''transportation mall,'';

(B) in subparagraph (G)(ii), by inserting '', except for the intercity bus portion of intermodal facilities or malls,'' after ''commercial revenue-producing facility'';

(C) in subparagraph (H)—

(i) by striking ''and'' after ''innovative'' and inserting ''or''; and

(ii) by striking ''or'' after the semicolon at the end;

(D) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

''(J) crime prevention and security, including—

''(i) projects to refine and develop security and emergency response plans; or

''(ii) projects to detect chemical or biological agents in public transportation;

''(K) conducting emergency response drills with public transportation agencies and local first response agencies or security training for public transportation employees, except for expenses relating to operations; or

''(L) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter.'';

(2) by striking paragraph (9);

(3) by redesignating paragraph (8) as paragraph (9);

(4) by striking paragraph (7) and inserting the following:

''(7) MASS TRANSPORTATION.—The term 'mass transportation' means public transportation.

''(8) MOBILITY MANAGEMENT.—The term 'mobility management' means a short-range planning or management activity or project that does not include operating public transportation services and—

''(A) improves coordination among public transportation providers, including private companies engaged in public transportation;

''(B) addresses customer needs by tailoring public transportation services to specific market niches; or

''(C) manages public transportation demand.'';

(5) by amending paragraph (10) to read as follows:

''(10) PUBLIC TRANSPORTATION.—The term 'public transportation' means transportation by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity passenger rail, or sightseeing transportation.'';

(6) in subparagraphs (A) and (E) of paragraph (15), by striking ''and'' each place it appears and inserting ''or'';

(7) by striking paragraph (16); and

(8) by redesignating paragraph (17) as paragraph (16), to read as follows:

''(16) URBANIZED AREA.—The term 'urbanized area' means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.''.

SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.

Section 5303 is amended to read as follows:

''§ 5303. Metropolitan transportation planning

''(a) DEFINITIONS.—As used in this section and in section 5304, the following definitions shall apply:

''(1) CONSULTATION.—A 'consultation' occurs when 1 party—

''(A) confers with another identified party in accordance with an established process;

''(B) prior to taking action, considers that party's views; and

''(C) periodically informs that party about action taken.

''(2) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization and the Governor under subsection (d).

''(3) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the Policy Board of the organization designated under subsection (c).

''(4) NON-METROPOLITAN AREA.—The term 'non-metropolitan area' means any geographic area outside all designated metropolitan planning areas.

''(5) NON-METROPOLITAN LOCAL OFFICIAL.—The term 'non-metropolitan local official' means any elected or appointed official of general purpose local government located in a non-metropolitan area who is responsible for transportation services for such local government.

''(b) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS.—To accomplish the objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans for metropolitan planning areas of the State in which it is located.

''(2) CONTENTS.—The plans developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the plans shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(4) PLANNING AND PROJECT DEVELOPMENT.—The metropolitan planning organization, the State Department of Transportation, and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements that address the most complex problems and pressing transportation needs in the metropolitan area.

''(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 residents—

''(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

''(B) in accordance with procedures established by applicable State or local law.

''(2) STRUCTURE.—Each metropolitan planning organization designated under paragraph (1) that serves an area identified as a transportation management area shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

''(C) appropriate State officials.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

''(A) to develop plans and programs for adoption by a metropolitan planning organization; and

''(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

''(4) CONTINUING DESIGNATION.—The designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

''(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

''(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

''(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

''(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

''(2) INCLUDED AREA.—Each metropolitan planning area—

''(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

''(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Office of Management and Budget.

''(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

''(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area in existence as of the date of enactment of this paragraph shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in accordance with paragraph (5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—If an urbanized area is designated after the date of enactment of this paragraph in a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in accordance with subsection (c)(1);

''(B) shall encompass the areas described in paragraph (2)(A);

''(C) may encompass the areas described in paragraph (2)(B); and

''(D) may address any nonattainment identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

''(e) COORDINATION IN MULTISTATE AREAS.—

''(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

''(2) INTERSTATE COMPACTS.—States are authorized—

''(A) to enter into agreements or compacts with other States, which are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) LAKE TAHOE REGION.—

''(A) DEFINITION.—In this paragraph, the term 'Lake Tahoe region' has the meaning given the term 'region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

''(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

''(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

''(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5304.

''(C) INTERSTATE COMPACT.—

''(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (c), to carry out the transportation planning process required by this section, California and Nevada may designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area), or in accordance with procedures established by applicable State or local law.

''(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

''(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

''(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of title 23 and this chapter, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

''(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

''(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

''(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.

''(f) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans required by this section.

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement funded from the highway trust fund is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans regarding the transportation improvement.

''(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single metropolitan planning area or State shall be coordinated directly with the affected, contiguous metropolitan planning organizations and States.

''(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to coordinate its planning process, to the maximum extent practicable, with those officials responsible for other types of planning activities that are affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, housing, and freight.

''(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans with due consideration of, and in coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under this chapter;

''(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(iii) recipients of assistance under section 204 of title 23.

''(g) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The goals and objectives developed through the metropolitan planning process for a metropolitan planning area under this section shall address, in relation to the performance of the metropolitan area transportation systems—

''(A) supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency, including through services provided by public and private operators;

''(B) increasing the safety of the transportation system for motorized and nonmotorized users;

''(C) increasing the security of the transportation system for motorized and nonmotorized users;

''(D) increasing the accessibility and mobility of people and for freight, including through services provided by public and private operators;

''(E) protecting and enhancing the environment, promoting energy conservation, and promoting consistency between transportation improvements and State and local land use planning and economic development patterns;

''(F) enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight, including through services provided by public and private operators;

''(G) promoting efficient system management and operation; and

''(H) emphasizing the preservation of the existing transportation system, including services provided by public and private operators.

''(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23 or this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

''(h) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) IN GENERAL.—Each metropolitan planning organization shall develop, and update not less frequently than every 3 years, a transportation plan for its metropolitan planning area in accordance with this subsection. In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast period. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(2) CONTENTS.—A transportation plan under this subsection shall be in a form that the Secretary determines to be appropriate and shall contain—

''(A) an identification of transportation facilities, including major roadways, public transportation, multimodal and intermodal facilities, and intermodal connectors, that should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

''(B) a financial plan that—

''(i) demonstrates how the adopted transportation plan can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

''(C) operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

''(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs; and

''(E) proposed transportation and transit enhancement activities.

''(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

''(4) PARTICIPATION BY INTERESTED PARTIES.—

''(A) DEVELOPMENT OF PARTICIPATION PLAN.—Not less frequently than every 3 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan by—

''(i) citizens;

''(ii) affected public agencies;

''(iii) representatives of public transportation employees;

''(iv) freight shippers;

''(v) providers of freight transportation services;

''(vi) private providers of transportation;

''(vii) representatives of users of public transit;

''(viii) representatives of users of pedestrian walkways and bicycle transportation facilities; and

''(ix) other interested parties.

''(B) CONTENTS OF PARTICIPATION PLAN.—The participation plan—

''(i) shall be developed in a manner the Secretary determines to be appropriate;

''(ii) shall be developed in consultation with all interested parties; and

''(iii) shall provide that all interested parties have reasonable opportunities to comment on—

''(I) the process for developing the transportation plan; and

''(II) the contents of the transportation plan.

''(C) CERTIFICATION.—Before the approval of a transportation plan by the Governor and metropolitan planning organizations, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

''(5) APPROVAL OF THE TRANSPORTATION PLAN.—

''(A) IN GENERAL.—Each transportation plan prepared by a metropolitan planning organization shall be—

''(i) approved by the Metropolitan Planning Organization; and

''(ii) submitted to the Governor for approval of the first 5 years of the plan.

''(B) PROJECT ADVANCEMENT.—The projects listed in the first 5 years of the plan may be selected for advancement consistent with the project selection requirements.

''(C) MAJOR AMENDMENTS.—Major amendments to the list described in subparagraph (B), including the addition, deletion, or concept and scope change of a regionally significant project, may not be advanced without—

''(i) appropriate public involvement;

''(ii) financial planning;

''(iii) transportation conformity analyses; and

''(iv) a finding by the Federal Highway Administration and Federal Transit Administration that the amended plan was produced in a manner consistent with this section.

''(6) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER CHAPTER 1 OF TITLE 23 AND THIS CHAPTER.—A transportation plan developed under this section for a metropolitan area shall include the projects and strategies within the metropolitan area that are proposed for funding under chapter 1 of title 23 and this chapter.

''(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the metropolitan transportation plan.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not regionally significant shall be grouped in 1 line item or identified individually in the metropolitan transportation plan.

''(7) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Except as otherwise provided in subsection (i)(4), the selection of federally funded projects in metropolitan planning areas shall be carried out, from the approved transportation plan—

''(i) by the State, in the case of projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5317 of this title;

''(ii) by the designated recipient, in the case of projects under section 5307; and

''(iii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project from the first 5 years of the approved transportation plan in place of another project in the same 5-year period.

''(8) PUBLICATION REQUIREMENTS.—

''(A) PUBLICATION OF TRANSPORTATION PLAN.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding 5 years shall be published or otherwise made available for public review by the cooperative effort of the State, transit operator, and the metropolitan planning organization. This listing shall be consistent with the funding categories identified in the first 5 years of the transportation plan.

''(C) RULEMAKING.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations specifying—

''(i) the types of data to be included in the list described in subparagraph (B), including—

''(I) the name, type, purpose, and location (geocoded) of each project;

''(II) the Federal, State, and local identification numbers assigned to each project;

''(III) amounts obligated and expended on each project, sorted by funding source and transportation mode, and including the date on which each obligation was made; and

''(IV) the status of each project; and

''(ii) the media through which the list described in subparagraph (B) will be made available to the public, including written and visual components for each of the projects listed.

''(i) TRANSPORTATION MANAGEMENT AREAS.—

''(1) REQUIRED IDENTIFICATION.—The Secretary shall identify as a transportation management area each urbanized area with a population of more than 200,000 individuals.

''(2) TRANSPORTATION PLANS.—Transportation plans for a metropolitan planning area serving a transportation management area shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

''(3) CONGESTION MANAGEMENT SYSTEM.—

''(A) IN GENERAL.—The transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and this chapter through the use of travel demand reduction and operational management strategies.

''(B) PHASE-IN SCHEDULE.—The Secretary shall establish a phase-in schedule that provides for not less than 1-year after the identification of transportation management areas under paragraph (1) to achieve full compliance with the requirements of this section.

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (except for projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under this chapter shall be selected for implementation from the approved transportation plan by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under title 23 shall be selected for implementation from the approved transportation plan by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

''(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with Federal law; and

''(ii) subject to subparagraph (B), certify, not less frequently than once every 3 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

''(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

''(i) the transportation planning process complies with the requirements of this section and other applicable Federal law; and

''(ii) a transportation plan for the metropolitan planning area has been approved by the metropolitan planning organization and the Governor.

''(C) PENALTY FOR FAILING TO CERTIFY.—

''(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

''(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

''(D) REVIEW OF CERTIFICATION.—In making a certification under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

''(j) ABBREVIATED PLANS FOR CERTAIN AREAS.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(k) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of title 23 or this chapter, Federal funds may not be advanced for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

''(2) APPLICABILITY.—This subsection applies to a nonattainment area within the

metropolitan planning area boundaries determined under subsection (d).

''(*l*) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project that is not eligible under title 23 or this chapter.

''(m) AVAILABILITY OF FUNDS.—Funds set aside under section 104(f) of title 23 or section 5308 of this title shall be available to carry out this section.

''(n) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a plan described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.

Section 5304 is amended to read as follows:

''§ 5304. Statewide transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To support the policies described in section 5301(a), each State shall develop a statewide transportation plan (referred to in this section as a ''Plan'') and a statewide transportation improvement program (referred to in this section as a ''Program'') for all areas of the State subject to section 5303.

''(2) CONTENTS.—The Plan and the Program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the Plan and the Program shall—

''(A) provide for the consideration of all modes of transportation and the policies described in section 5301(a); and

''(B) be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—Each State shall—

''(1) coordinate planning under this section with the transportation planning activities under section 5303 for metropolitan areas of the State and with other related statewide planning activities, such as trade and economic development and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—States may enter into agreements or compacts with other States for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(d) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration of projects, strategies, and implementing projects and services that will—

''(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of people and freight;

''(E) protect and enhance the environment, promote energy conservation, promote consistency between transportation improvements and State and local land use planning and economic development patterns, and improve the quality of life;

''(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23 or this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a Program, a project or strategy, or the certification of a planning process.

''(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider—

''(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

''(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) coordination of Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—Each State shall develop a Plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN AREAS.—The Plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

''(A) provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed Plan; and

''(B) identify transportation strategies necessary to efficiently serve the mobility needs of people.

''(4) FINANCIAL PLAN.—The Plan may include a financial plan that—

''(A) demonstrates how the adopted Plan can be implemented;

''(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

''(C) recommends any additional financing strategies for needed projects and programs; and

''(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

''(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (4).

''(6) EXISTING SYSTEM.—The Plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—Each State shall develop a Program for all areas of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the Program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested parties with a reasonable opportunity to comment on the proposed Program.

''(4) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A Program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—The Program shall cover a minimum of 5 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 5 years. An annual listing of projects for which funds have been obligated in the preceding 5 years in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in the first 5 years of each metropolitan transportation plan.

''(C) INDIVIDUAL IDENTIFICATION.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

''(i) consistent with the Plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in each year of the initial 5 years of an approved metropolitan transportation plan; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The Program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—The Program may include a financial plan that—

''(i) demonstrates how the approved Program can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

''(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved Program.

''(H) PRIORITIES.—The Program shall reflect the priorities for programming and expenditures of funds, including transportation and transit enhancement activities, required by title 23 and this chapter, and transportation control measures included in the State's air quality implementation plan.

''(5) PROJECT SELECTION FOR AREAS WITH POPULATIONS OF FEWER THAN 50,000 INDIVIDUALS.—

''(A) IN GENERAL.—Projects carried out in areas with populations of fewer than 50,000 individuals shall be selected, from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or sections 5310 and 5311 of this title), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation.

''(B) CERTAIN PROGRAMS.—Projects carried out in areas with populations of fewer than 50,000 individuals under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this title shall be selected, from the approved Program, by the State in consultation with the affected local officials with responsibility for transportation.

''(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 5 years.

''(7) PLANNING FINDING.—Not less frequently than once every 5 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed are consistent with this section and section 5303.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved Program in place of another project in the program.

''(h) FUNDING.—Funds set aside pursuant to section 104(i) of title 23 and 5308 of this title shall be available to carry out this section.

''(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section and section 5303, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management system under section 5303(i)(3) if the Secretary determines that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of section 5303.

''(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a metropolitan or statewide transportation plan or the Statewide Transportation Improvement Program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(k) INTEGRATION OF PLANNING AND ENVIRONMENTAL STUDIES.—Section 5303(*o*) shall also apply to the planning process established under this section, except that the planning factors to be considered shall be those set forth in subsection (d).''.

SEC. 3007. TRANSPORTATION MANAGEMENT AREAS.

Section 5305 is repealed.

SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.

Section 5306 is amended—

(1) in subsection (a)—

(A) by striking ''5305 of this title'' and inserting ''5308''; and

(B) by inserting '', as determined by local policies, criteria, and decision making,'' after ''feasible'';

(2) in subsection (b) by striking ''5303–5305 of this title'' and inserting ''5303, 5304, and 5308''; and

(3) by adding at the end the following:

''(c) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations describing how the requirements under this chapter relating to subsection (a) shall be enforced.

SEC. 3009. URBANIZED AREA FORMULA GRANTS.

(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

(1) by striking subsections (h), (j) and (k); and

(2) by redesignating subsections (i), (*l*), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

(b) DEFINITIONS.—Section 5307(a) is amended—

(1) by amending paragraph (2)(A) to read as follows:

''(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under sections 5336 and 5337 that are attributable to transportation management areas designated under section 5303; or''; and

(2) by adding at the end the following:

''(3) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that may receive a Federal transit program grant indirectly through a recipient, rather than directly from the Federal Government.''.

(c) GENERAL AUTHORITY.—Section 5307(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary of Transportation may award grants under this section for—

''(A) capital projects, including associated capital maintenance items;

''(B) planning, including mobility management;

''(C) transit enhancements;

''(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000; and

''(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

''(i) the urbanized area includes parts of more than one State or Commonwealth;

''(ii) the portion of the urbanized area includes only one State or Commonwealth;

''(iii) the population of the portion of the urbanized area is less than 30,000; and

''(iv) the grants will not be used to provide public transportation outside of the portion.'';

(2) by amending paragraph (2) to read as follows:

''(2) SPECIAL RULE FOR FISCAL YEARS 2004 THROUGH 2006—

''(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for fiscal years 2004 through 2006, to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000 as determined by the 2000 decennial census of population if—

''(i) the urbanized area had a population of less than 200,000, as determined by the 1990 decennial census of population;

''(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 1990 decennial census of population;

''(iii) the area was not designated as an urbanized area as determined by the 1990 decennial census of population; and

''(iv) a portion of the area was not designated as an urbanized area, as determined by the 1990 decennial census and received assistance under section 5311 in fiscal year 2002.

''(B) MAXIMUM AMOUNTS IN FISCAL YEAR 2004.—In fiscal year 2004—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area under the 1990 Federal decennial census and eligible to receive funds under subparagraph (A)(iv) shall receive an amount of funds made available to carry out this section that is not less than the amount the portion of the area received under section 5311 in fiscal year 2002.

''(C) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 50 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 50 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area under the 1990 decennial census and eligible to receive funds under subparagraph (A)(iv) shall receive an amount of funds made available to carry out this section that is not less 50 percent of the amount the portion of the area received under section 5311 in fiscal year 2002.

''(D) MAXIMUM AMOUNTS IN FISCAL YEAR 2006.—In fiscal year 2006—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 25 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000 as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 25 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area under the 1990 decennial census and eligible to receive funds under subparagraph (A)(iv) shall receive an amount of funds made available to carry out this section that is not less than 25 percent of the amount the portion of the area received under section 5311 in fiscal year 2002.''; and

(3) by striking paragraph (4).

(d) PUBLIC PARTICIPATION REQUIREMENTS.—Section 5307(c)(5) is amended by striking ''section 5336'' and inserting ''sections 5336 and 5337''.

(e) GRANT RECIPIENT REQUIREMENTS.—Section 5307(d)(1) is amended—

(1) in subparagraph (A), by inserting '', including safety and security aspects of the program'' after ''program'';

(2) in subparagraph (E), by striking ''section'' and all that follows and inserting ''section, the recipient will comply with sections 5323 and 5325;'';

(3) in subparagraph (H), by striking ''sections 5301(a) and (d), 5303–5306, and 5310(a)–(d) of this title'' and inserting ''subsections (a) and (d) of section 5301 and sections 5303 through 5306'';

(4) in subparagraph (I) by striking ''and'' at the end;

(5) in subparagraph (J), by striking the period at the end and inserting ''; and''; and

(6) by adding at the end the following:

''(K) if located in an urbanized area with a population of not less than 200,000, will expend 1 percent of the amount the recipient receives each fiscal year under this section for transit enhancement activities described in section 5302(a)(15).''.

(f) GOVERNMENT'S SHARE OF COSTS.—Section 5307(e) is amended—

(1) by striking the first sentence and inserting the following:

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall cover 80 percent of the net project cost.'';

(2) by striking ''A grant for operating expenses'' and inserting the following:

''(2) OPERATING EXPENSES.—A grant for operating expenses'';

(3) by striking the fourth sentence and inserting the following:

''(3) REMAINING COSTS.—The remainder of the net project cost shall be provided in cash from non-Federal sources or revenues derived from the sale of advertising and concessions and amounts received under a service agreement with a State or local social service agency or a private social service organization.''; and

(4) by adding at the end the following: ''The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to the remainder.''.

(g) UNDERTAKING PROJECTS IN ADVANCE.—Section 5307(g) is amended by striking paragraph (4).

(h) RELATIONSHIP TO OTHER LAWS.—Section 5307(k), as redesignated, is amended to read as follows:

''(k) RELATIONSHIP TO OTHER LAWS.—

''(1) APPLICABLE PROVISIONS.—Sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333 and 5335 apply to this section and to any grant made under this section.

''(2) INAPPLICABLE PROVISIONS.—

''(A) IN GENERAL.—Except as provided under this section, no other provision of this chapter applies to this section or to a grant made under this section.

''(B) TITLE 5.—The provision of assistance under this chapter shall not be construed as bringing within the application of chapter 15 of title 5, any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to which such chapter is otherwise inapplicable.''.

SEC. 3010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

''§ 5308. Planning programs

''(a) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, make agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities to—

''(1) develop transportation plans and programs;

''(2) plan, engineer, design, and evaluate a public transportation project; and

''(3) conduct technical studies relating to public transportation, including—

''(A) studies related to management, planning, operations, capital requirements, and economic feasibility;

''(B) evaluations of previously financed projects;

''(C) peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners; and

''(D) other similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of facilities and equipment.

''(b) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to section 5338 to carry out this section and sections 5303 through 5305 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

''(c) METROPOLITAN PLANNING PROGRAM.—

''(1) ALLOCATIONS TO STATES.—

''(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(3)(A) to States to carry out sections 5303 and 5306 in a ratio equal to the population in urbanized areas in each State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

''(B) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the total amount allocated under this paragraph.

''(2) AVAILABILITY OF FUNDS.—A State receiving an allocation under paragraph (1) shall promptly distribute such funds to metropolitan planning organizations in the State under a formula—

''(A) developed by the State in cooperation with the metropolitan planning organizations;

''(B) approved by the Secretary of Transportation;

''(C) that considers population in urbanized areas; and

''(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

''(3) SUPPLEMENTAL ALLOCATIONS.—

''(A) IN GENERAL.—The Secretary shall allocate 20 percent of the amount made available under subsection (g)(3)(A) to States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

''(B) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303 through 5306.

''(d) STATE PLANNING AND RESEARCH PROGRAM.—

''(1) IN GENERAL.—The amounts made available pursuant to subsection (g)(3)(B) shall be allocated to States for grants and contracts to carry out sections 5304, 5306, 5315, and 5322 so that each State receives an amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census.

''(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated under this subsection.

''(3) REALLOCATION.—A State may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (c).

''(e) PLANNING CAPACITY BUILDING PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the ''Program'') to support and fund innovative practices and enhancements in transportation planning.

''(2) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5303 and 5304.

''(3) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

''(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

''(ii) to conduct research, disseminate information, and provide technical assistance.

''(B) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in paragraph (2)(B), the Secretary may—

''(i) expend appropriated funds directly; or

''(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions, with a Federal agency, State agency, local governmental authority, association, nonprofit or for-profit entity, or institution of higher education.

''(f) GOVERNMENT'S SHARE OF COSTS.—Amounts made available to carry out subsections (c), (d), and (e) may not exceed 80 percent of the costs of the activity unless the Secretary of Transportation determines that it is in the interests of the Government not to require a State or local match.

''(g) ALLOCATION OF FUNDS.—Of the amounts made available under section 5338(b)(2)(B) for fiscal year 2005 and each fiscal year thereafter to carry out this section—

''(1) $5,000,000 shall be allocated for the Planning Capacity Building Program established under subsection (e);

''(2) $20,000,000 shall be allocated for grants under subsection (a)(2) for alternatives analyses required by section 5309(e)(2)(A); and

''(3) of the remaining amount—

''(A) 82.72 percent shall be allocated for the metropolitan planning program described in subsection (d); and

''(B) 17.28 percent shall be allocated to carry out subsection (b).

''(h) REALLOCATIONS.—Any amount allocated under this section that has not been used 3 years after the end of the fiscal year in which the amount was allocated shall be reallocated among the States.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5308 in the table of sections for chapter 53 is amended to read as follows:

''5308. Planning programs.''.

SEC. 3011. CAPITAL INVESTMENT PROGRAM.

(a) SECTION HEADING.—The section heading of section 5309 is amended to read as follows:

''§ 5309. Capital investment grants''.

(b) GENERAL AUTHORITY.—Section 5309(a) is amended—

(1) in paragraph (1)—

(A) by striking ''(1) The Secretary of Transportation may make grants and loans'' and inserting the following:

''(1) GRANTS AUTHORIZED.—The Secretary may award grants'';

(B) in subparagraph (A), by striking ''alternatives analysis related to the development of systems,'';

(C) by striking subparagraphs (B), (C), (D), and (G);

(D) by redesignating subparagraphs (E), (F), and (H) as subparagraphs (B), (C), and (D), respectively;

(E) in subparagraph (C), as redesignated, by striking the semicolon at the end and inserting '', including programs of bus and bus-related projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and''; and

(F) in subparagraph (D), as redesignated—

(i) by striking ''to support fixed guideway systems''; and

(ii) by striking ''dedicated bus and high occupancy vehicle'';

(2) by amending paragraph (2) to read as follows:

''(2) GRANTEE REQUIREMENTS.—

''(A) GRANTEE IN AN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient located in an urbanized area shall be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

''(B) GRANTEE NOT IN AN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient not located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions as a recipient or subrecipient of assistance under section 5311.

''(C) SUBRECIPIENT.—The Secretary shall require that any private, nonprofit organization that is a subrecipient of a grant awarded under this section shall be subject to the same terms, conditions, requirements, and provisions as a subrecipient of assistance under section 5310.''; and

(3) by adding at the end the following:

''(3) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the findings required under this subsection.''.

(c) DEFINED TERM.—Section 5309(b) is amended to read as follows:

''(b) DEFINED TERM.—As used in this section, the term 'alternatives analysis' means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

''(1) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

''(2) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

''(3) the selection of a locally preferred alternative; and

''(4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.''.

(d) GRANT REQUIREMENTS.—Section 5309(d) is amended to read as follows:

''(d) GRANT REQUIREMENTS.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

''(1) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

''(2) the applicant has, or will have—

''(A) the legal, financial, and technical capacity to carry out the project (including safety and security aspects of the project);

''(B) satisfactory continuing control over the use of the equipment or facilities; and

''(C) the capability and willingness to maintain the equipment or facilities.''.

(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—Section 5309(e) is amended to read as follows:

''(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—

''(1) FULL FUNDING GRANT AGREEMENT.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving not less than $75,000,000 under this subsection for a new fixed guideway capital project that—

''(A) is authorized for final design and construction; and

''(B) has been rated as medium, medium-high, or high, as defined in this subsection.

''(2) DETERMINATIONS.—The Secretary shall not award a grant under this subsection for a major capital project unless the Secretary determines that the proposed project is—

''(A) based on the results of an alternatives analysis and preliminary engineering;

''(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use patterns and policies; and

''(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct the project, and maintain and operate the entire public transportation system, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(3) EVALUATION OF PROJECT JUSTIFICATION.—In order to make the determinations required under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—

''(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

''(B) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(C) the direct and indirect costs of relevant alternatives;

''(D) factors such as—

''(i) congestion relief;

''(ii) improved mobility;

''(iii) air pollution;

''(iv) noise pollution;

''(v) energy consumption; and

''(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

''(E) reductions in local infrastructure costs achieved through compact land use development;

''(F) the cost of suburban sprawl;

''(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

''(H) population density and current transit ridership in the transportation corridor;

''(I) the technical capability of the grant recipient to construct the project;

''(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

''(K) other factors that the Secretary determines appropriate to carry out this chapter.

''(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

''(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

''(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

''(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

''(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

''(i) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(ii) existing grant commitments;

''(iii) the degree to which financing sources are dedicated to the proposed purposes;

''(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

''(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project, provided that if the Secretary gives priority to financing projects that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

''(5) PROJECT ADVANCEMENT AND RATINGS.—

''(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

''(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by regulation.

''(6) APPLICABILITY.—This subsection shall not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2004.

''(7) RULEMAKING.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations on the manner by which the Secretary shall evaluate and rate projects based on the results of alternatives analysis, project justification, and local financial commitment, in accordance with this subsection.

''(8) POLICY GUIDANCE.—

''(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process—

''(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004; and

''(ii) each time significant changes are made by the Secretary to the new starts project review and evaluation process and criteria, but not less frequently than once every 2 years.

''(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

''(i) invite public comment to the guidance published under subparagraph (A); and

''(ii) publish a response to the comments received under clause (i).''.

(f) MAJOR CAPITAL INVESTMENT PROJECTS LESS THAN $75,000,000.—Section 5309(f) is amended to read as follows:

''(f) MAJOR CAPITAL INVESTMENT PROJECTS LESS THAN $75,000,000.—

''(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—

''(A) IN GENERAL.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than $75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

''(i) is authorized by law; and

''(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (3).

''(B) CONTENTS.—

''(i) IN GENERAL.—An agreement under this paragraph shall specify—

''(I) the scope of the project to be constructed;

''(II) the estimated net cost of the project;

''(III) the schedule under which the project shall be constructed;

''(IV) the maximum amount of funding to be obtained under this subsection;

''(V) the proposed schedule for obligation of future Federal grants; and

''(VI) the sources of non-Federal funding.

''(ii) ADDITIONAL FUNDING.—The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

''(C) FULL FUNDING GRANT AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

''(2) SELECTION PROCESS.—

''(A) SELECTION CRITERIA.—The Secretary may provide financial assistance under this subsection for a proposed project only if the Secretary determines that the project is—

''(i) based on the results of planning and alternatives analysis;

''(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

''(iii) supported by an acceptable degree of local financial commitment.

''(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph (A)(i), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

''(C) PROJECT JUSTIFICATION.—For purposes of making the determination under paragraph (A)(ii), the Secretary shall—

''(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local developmental goals;

''(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service;

''(iii) determine the degree to which the project will have a positive effect on local economic development;

''(iv) consider the reliability of the forecasts of costs and ridership associated with the project; and

''(v) consider other factors that the Secretary determines appropriate to carry out this subsection.

''(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(iii), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

''(3) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

''(A) IN GENERAL.—A proposed project under this subsection may advance from the planning and alternatives analysis stage to project development and construction only if—

''(i) the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements; and

''(ii) the metropolitan planning organization has adopted the locally preferred alternative for the project into the long-range transportation plan.

''(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall evaluate and rate the project as 'high', 'medium-high', 'medium', 'medium-low', or 'low' based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required by this subsection.

''(4) IMPACT REPORT.—

''(A) IN GENERAL.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Federal Transit Administration shall submit a report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway projects to—

''(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

''(5) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.''.

(g) FULL FUNDING GRANT AGREEMENTS.—Section 5309(g)(2) is amended by adding at the end the following:

''(C) BEFORE AND AFTER STUDY.—

''(i) IN GENERAL.—Each full funding grant agreement shall require the applicant to conduct a study that—

''(I) describes and analyzes the impacts of the new start project on transit services and transit ridership;

''(II) evaluates the consistency of predicted and actual project characteristics and performance; and

''(III) identifies sources of differences between predicted and actual outcomes.

''(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

''(I) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement shall submit a complete plan for the collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

''(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

''(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

''(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

''(cc) collection of data on the transit system 2 years after the opening of the new start project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the new start project; and

''(dd) analysis of the consistency of predicted project characteristics with the after data.

''(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement, recipients shall have collected data on the current system, according to the plan required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

''(E) PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM.—

''(i) AUTHORIZATION.—The Secretary may establish a pilot program to demonstrate the advantages of public-private partnerships for certain fixed guideway systems development projects.

''(ii) IDENTIFICATION OF QUALIFIED PROJECTS.—The Secretary shall identify qualified public-private partnership projects as permitted by applicable State and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.''.

(h) FEDERAL SHARE OF NET PROJECT COST.—Section 5309(h) is amended to read as follows:

''(h) FEDERAL SHARE OF ADJUSTED NET PROJECT COST.—

''(1) IN GENERAL.—The Secretary shall estimate the Federal share of the net project cost based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities.

''(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a major capital investment project evaluated under subsections (e) and (f) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

''(3) MAXIMUM FEDERAL SHARE.—

''(A) IN GENERAL.—A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2), unless the grant recipient requests a lower grant percentage.

''(B) EXCEPTIONS.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

''(i) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

''(ii) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

''(4) OTHER SOURCES.—The costs not funded by a grant under this section may be funded from—

''(A) an undistributed cash surplus;

''(B) a replacement or depreciation cash fund or reserve; or

''(C) new capital, including any Federal funds that are eligible to be expended for transportation.

''(5) PLANNED EXTENSION TO FIXED GUIDEWAY SYSTEM.—In addition to amounts allowed under paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the Secretary determines that only non-Federal funds were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant is made at the same time.

''(6) EXCEPTION.—The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to amounts allowed under paragraph (4).''.

(i) LOAN PROVISIONS AND FISCAL CAPACITY CONSIDERATIONS.—Section 5309 is amended—

(1) by striking subsections (i), (j), (k), and (*l*);

(2) by redesignating subsections (m) and (n) as subsections (i) and (j), respectively;

(3) by striking subsection (o) (as added by section 3009(i) of the Federal Transit Act of 1998); and

(4) by redesignating subsections (o) and (p) as subsections (k) and (*l*), respectively.

(j) ALLOCATING AMOUNTS.—Section 5309(i), as redesignated, is amended to read as follows:

''(i) ALLOCATING AMOUNTS.—

''(1) FISCAL YEAR 2004.—Of the amounts made available or appropriated for fiscal year 2004 under section 5338(a)(3)—

''(A) $1,315,983,615 shall be allocated for projects of not less than $75,000,000 for major capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and new major corridor improvements under subsection (f);

''(B) $1,199,387,615 shall be allocated for capital projects for fixed guideway modernization; and

''(C) $673,204,520 shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(2) IN GENERAL.—Of the amounts made available or appropriated for fiscal year 2005 and each fiscal year thereafter for grants under this section pursuant to subsections (b)(4) and (c) of section 5338—

''(A) the amounts appropriated under section 5338(c) shall be allocated for major capital projects for—

''(i) new fixed guideway systems and extensions of not less than $75,000,000, in accordance with subsection (e); and

''(ii) new major capital projects for corridor improvements, in accordance with subsection (f); and

''(B) the amounts made available under section 5338(b)(4) shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(K) for fiscal year 2005 and each fiscal year thereafter shall be allocated in accordance with section 5337.

''(4) NEW FIXED GUIDEWAY SYSTEMS AND CORRIDOR IMPROVEMENTS.—Not more that 8 percent of the allocation described in paragraphs (1)(A) and (2)(A) may be expended on preliminary engineering.

''(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A), $10,400,000 shall be available in each of the fiscal years 2004 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals.

''(6) BUS AND BUS FACILITY GRANTS.—

''(A) CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

''(B) PROJECTS NOT IN URBANIZED AREAS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

''(C) INTERMODAL TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than $75,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.''.

(k) REPORTS.—Section 5309 is amended by inserting at the end the following:

''(m) REPORTS.—

''(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

''(A) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

''(i) a proposal on the allocation of amounts to finance grants for capital investment projects among grant applicants;

''(ii) a recommendation of projects to be funded based on—

''(I) the evaluations and ratings determined under subsection (e); and

''(II) existing commitments and anticipated funding levels for the subsequent 3 fiscal years; and

''(iii) detailed ratings and evaluations on each project recommended for funding.

''(2) TRIENNIAL REPORTS ON PROJECT RATINGS.—

''(A) IN GENERAL.—Not later than the first Monday of February, the first Monday of June, and the first Monday of October of each year, the Secretary shall submit a report on project ratings to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

''(i) a summary of the ratings of all capital investment projects for which funding was requested under this section;

''(ii) detailed ratings and evaluations on the project of each applicant that had significant changes to the finance or project proposal or has completed alternatives or preliminary engineering since the date of the latest report; and

''(iii) all relevant information supporting the evaluation and rating of each updated project, including a summary of the financial plan of each updated project.

''(3) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

''(A) the Committee on Transportation and Infrastructure of the House of Representatives;

''(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(C) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(D) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(4) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

''(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, and each year thereafter, the Secretary shall submit a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—

''(i) estimates made at the time projects are approved for entrance into final design;

''(ii) costs and ridership when the project commences revenue operation; and

''(iii) costs and ridership when the project has been in operation for 2 years.

''(5) ANNUAL GENERAL ACCOUNTING OFFICE REVIEW.—

''(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary's implementation of such processes and procedures.

''(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (3), the Comptroller General shall submit a report to Congress that summarizes the results of the review conducted under subparagraph (A).

''(6) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report to the committees and subcommittees listed under paragraph (3) on the suitability of allowing contractors to public transportation agencies that undertake major capital investments under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.''.

SEC. 3012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

(a) IN GENERAL.—Section 5310 is amended to read as follows:

''§ 5310. New freedom for elderly persons and persons with disabilities

''(a) GENERAL AUTHORITY.—

''(1) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

''(2) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

''(3) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts received under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(b) ALLOTMENTS AMONG STATES.—

''(1) IN GENERAL.—From amounts made available or appropriated in each fiscal year under subsections (a)(1)(C)(iv) and (b)(2)(D) of section 5338 for grants under this section, the Secretary shall allot amounts to each State under a formula based on the number of elderly individuals and individuals with disabilities in each State.

''(2) TRANSFER OF FUNDS.—Any funds allotted to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

''(3) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

''(A) a private nonprofit organization;

''(B) a public transportation agency or authority; or

''(C) a governmental authority that—

''(i) has been approved by the State to coordinate services for elderly individuals and individuals with disabilities;

''(ii) certifies that nonprofit organizations are not readily available in the area that can provide the services described under this subsection; or

''(iii) will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

''(c) FEDERAL SHARE.—

''(1) MAXIMUM.—

''(A) IN GENERAL.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(b)(1) of title 23 shall receive an increased Federal share in accordance with the formula under that section.

''(2) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section—

''(A) may be funded from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

''(B) may be derived from amounts appropriated to or made available to any Federal agency (other than the Department of Transportation, except for Federal Lands Highway funds) that are eligible to be expended for transportation.

''(3) EXCEPTION.—For purposes of paragraph (2), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(d) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant recipient under this section shall be subject to the requirements of a grant recipient under section 5307 to the extent the Secretary determines to be appropriate.

''(2) CERTIFICATION REQUIREMENTS.—

''(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

''(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this section shall certify that—

''(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

''(C) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

''(e) STATE PROGRAM OF PROJECTS.—

''(1) SUBMISSION TO SECRETARY.—Each State shall annually submit a program of transportation projects to the Secretary for approval with an assurance that the program provides for maximum feasible coordination between transportation services funded under this section and transportation services assisted by other Federal sources.

''(2) USE OF FUNDS.—Each State may use amounts made available to carry out this section to provide transportation services for elderly individuals and individuals with disabilities if such services are included in an approved State program of projects.

''(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the needs of elderly individuals and individuals with disabilities.

''(g) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

''(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

''(i) FARES NOT REQUIRED.—This section does not require that elderly individuals and individuals with disabilities be charged a fare.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5310 in the table of sections for chapter 53 is amended to read as follows:

''5310. New freedom for elderly persons and persons with disabilities.''.

SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

(a) DEFINITIONS.—Section 5311(a) is amended to read as follows:

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a State that receives a Federal transit program grant directly from the Federal Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that receives Federal transit program grant funds indirectly through a recipient.''.

(b) GENERAL AUTHORITY.—Section 5311(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) GRANTS AUTHORIZED.—Except as provided under paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

''(A) public transportation capital projects;

''(B) operating costs of equipment and facilities for use in public transportation; and

''(C) the acquisition of public transportation services.'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

''(2) STATE PROGRAM.—

''(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

''(B) SUBMISSION TO SECRETARY.—Each State shall annually submit the program described in subparagraph (A) to the Secretary.

''(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

''(i) the program provides a fair distribution of amounts in the State;

''(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources; and

''(iii) amounts provided for projects on Indian reservations are not less than amounts

attributable to the population and land area of Indian reservations in the State, as published under subsection (c)(5).'';

(4) in paragraph (3), as redesignated—

(A) by striking ''(3) The Secretary of Transportation'' and inserting the following:

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary'';

(B) by striking ''make'' and inserting ''use not more than 2 percent of the amount made available to carry out this section to award''; and

(C) by adding at the end the following:

''(B) DATA COLLECTION.—

''(i) REPORT.—Each grantee under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(I) total annual revenue;

''(II) sources of revenue;

''(III) total annual operating costs;

''(IV) total annual capital costs;

''(V) fleet size and type, and related facilities;

''(VI) revenue vehicle miles; and

''(VII) ridership.''; and

(5) by adding after paragraph (3) the following:

''(4) Of the amount made available to carry out paragraph (3)—

''(A) not more than 15 percent may be used to carry out projects of a national scope; and

''(B) any amounts not used under subparagraph (A) shall be allocated to the States.''.

(c) APPORTIONMENTS.—Section 5311(c) is amended to read as follows:

''(c) APPORTIONMENTS.—

''(1) IN GENERAL.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338—

''(A) 20 percent shall be apportioned to the States in accordance with paragraph (2); and

''(B) 80 percent shall be apportioned to the States in accordance with paragraph (3).

''(2) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

''(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (1)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

''(3) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (1)(B) multiplied by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(4) PUBLICATION OF APPORTIONMENTS.—The Secretary shall publish the total amount apportioned to each State under this subsection and the amounts attributable to the population and land area to Indian reservation in each State.''.

(d) USE FOR ADMINISTRATIVE, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) by striking ''AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation'' and inserting '', PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary'';

(2) by striking ''to a recipient''; and

(3) by striking paragraph (2).

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—''; and

(B) by striking ''after September 30, 1993,''; and

(2) in paragraph (2)—

(A) by striking ''A State'' and inserting ''After consultation with affected intercity bus service providers, a State''; and

(B) by striking ''of Transportation''.

(f) FEDERAL SHARE OF COSTS.—Section 5311(g) is amended to read as follows:

''(g) FEDERAL SHARE OF COSTS.—

''(1) MAXIMUM FEDERAL SHARE.—

''(A) CAPITAL PROJECTS.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant awarded under this section for any purpose other than operating assistance may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(b)(1) of title 23 shall receive a Federal share of the net capital costs in accordance with the formula under that section.

''(B) OPERATING ASSISTANCE.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(b)(1) of title 23 shall receive a Federal share of the net operating costs equal to 62.5 percent of the Federal share provided for under subparagraph (A)(ii).

''(2) OTHER FUNDING SOURCES.—Funds for a project under this section that are not provided for by a grant under this section—

''(A) may be provided from—

''(i) an undistributed cash surplus;

''(ii) a replacement or depreciation cash fund or reserve;

''(iii) a service agreement with a State or local social service agency or a private social service organization; or

''(iv) new capital; and

''(B) may be derived from amounts appropriated to or made available to a Federal agency (other than the Department of Transportation, except for Federal Land Highway funds) that are eligible to be expended for transportation.

''(3) USE OF FEDERAL GRANT.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Federal grant for the payment of operating expenses.

''(4) EXCEPTION.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(c)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(c)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.''.

(g) WAIVER CONDITION.—Section 5311(j)(1) is amended by striking ''but the Secretary of Labor may waive the application of section 5333(b)'' and inserting ''if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees''.

SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

(a) IN GENERAL.—Section 5312 is amended—

(1) by amending subsection (a) to read as follows:

''(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with departments, agencies, and instrumentalities of the United States Government) for research, development, demonstration or deployment projects, or evaluation of technology of national significance to public transportation that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

''(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

''(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under any other law.'';

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as (b) and (c), respectively.

(4) in subsection (b), as redesignated—

(A) in paragraph (2), by striking ''other agreements'' and inserting ''other transactions''; and

(B) in paragraph (5), by striking ''within the Mass Transit Account of the Highway Trust Fund''; and

(5) in subsection (c), as redesignated—

(A) in paragraph (2), by striking ''public and private'' and inserting ''public or private''; and

(B) in paragraph (3), by striking ''within the Mass Transit Account of the Highway Trust Fund'' .

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5312 is amended to read as follows:

''§ 5312. Research, development, demonstration, and deployment projects''.

(2) TABLE OF SECTIONS.—The item relating to section 5312 in the table of sections for chapter 53 is amended to read as follows:

''5312. Research, development, demonstration, and deployment projects.''.

SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 5313 is amended—

(1) by striking subsection (b);

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1) The amounts made available under paragraphs (1) and (2)C)(ii) of section 5338(c) of this title'' and inserting ''The amounts made available under subsections (a)(5)(C)(iii) and (b)(2)(G)(i) of section 5338''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(b) FEDERAL ASSISTANCE.—''; and

(3) by amending subsection (c) to read as follows:

''(c) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Federal share consistent with such benefit.''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5313 is amended to read as follows:

''§ 5313. Transit cooperative research program''.

(2) TABLE OF SECTIONS.—The item relating to section 5313 in the table of sections for chapter 53 is amended to read as follows:

''5313. Transit cooperative research program.''.

SEC. 3016. NATIONAL RESEARCH PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) AVAILABILITY OF FUNDS.—The Secretary may use amounts made available under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338 for grants, contracts, cooperative agreements, or other transactions for the purposes described in sections 5312, 5315, and 5322.'';

(B) in paragraph (2), by striking ''(2) Of'' and inserting the following:

''(2) ADA COMPLIANCE.—From'';

(C) by amending paragraph (3) to read as follows:

''(3) SPECIAL DEMONSTRATION INITIATIVES.—The Secretary may use not more than 25 percent of the amounts made available under paragraph (1) for special demonstration initiatives, subject to terms that the Secretary determines to be consistent with this chapter. For a nonrenewable grant of not more than $100,000, the Secretary shall provide expedited procedures for complying with the requirements of this chapter.''; and

(D) in paragraph (4)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(2) by amending subsection (b) to read as follows:

''(b) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other transaction financed under subsection (a) or section 5312, 5313, 5315, or 5322, the Secretary shall establish a Federal share consistent with such benefit.''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 5314 is amended to read as follows:

''§ 5314. National research programs''.

(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

''5314. National research programs.''.

SEC. 3017. NATIONAL TRANSIT INSTITUTE.

(a) Section 5315 is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ESTABLISHMENT.—The Secretary shall award a grant to Rutgers University to conduct a national transit institute.

''(b) DUTIES.—

''(1) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established pursuant to subsection (a) shall develop and conduct training programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

''(2) TRAINING PROGRAMS.—The training programs developed under paragraph (1) may include courses in recent developments, techniques, and procedures related to—

''(A) intermodal and public transportation planning;

''(B) management;

''(C) environmental factors;

''(D) acquisition and joint use rights of way;

''(E) engineering and architectural design;

''(F) procurement strategies for public transportation systems;

''(G) turnkey approaches to delivering public transportation systems;

''(H) new technologies;

''(I) emission reduction technologies;

''(J) ways to make public transportation accessible to individuals with disabilities;

''(K) construction, construction management, insurance, and risk management;

''(L) maintenance;

''(M) contract administration;

''(N) inspection;

''(O) innovative finance;

''(P) workplace safety; and

''(Q) public transportation security.''; and

(2) in subsection (d), by striking ''mass'' each place it appears.

SEC. 3018. BUS TESTING FACILITY.

Section 5318 is repealed.

SEC. 3019. BICYCLE FACILITIES.

Section 5319 is amended by striking ''5307(k)'' and inserting ''5307(d)(1)(K)''.

SEC. 3020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

Section 5320 is repealed.

SEC. 3021. CRIME PREVENTION AND SECURITY.

Section 5321 is repealed.

SEC. 3022. GENERAL PROVISIONS ON ASSISTANCE.

Section 5323 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

''(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

''(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

''(C) just compensation under State or local law will be paid to the company for its franchise or property.''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(2) LIMITATION.—'';

(2) by amending subsection (b) to read as follows:

''(b) NOTICE AND PUBLIC HEARING.—

''(1) IN GENERAL.—An application for a grant under this chapter for a capital project that will substantially affect a community, or the public transportation service of a community, shall include, in the environmental record for the project, evidence that the applicant has—

''(A) provided an adequate opportunity for public review and comment on the project;

''(B) held a public hearing on the project if the project affects significant economic, social, or environmental interests;

''(C) considered the economic, social, and environmental effects of the project; and

''(D) found that the project is consistent with official plans for developing the urban area.

''(2) CONTENTS OF NOTICE.—Notice of a hearing under this subsection—

''(A) shall include a concise description of the proposed project; and

''(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.'';

(3) by amending subsection (c) to read as follows:

''(c) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.'';

(4) by amending subsection (d) to read as follows:

''(d) CONDITIONS ON BUS TRANSPORTATION SERVICE.—Financial assistance under this chapter may be used to buy or operate a bus only if the recipient agrees to comply with the following conditions on bus transportation service:

''(1) CHARTER BUS SERVICE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), a recipient may provide incidental charter bus service only within its lawful service area if—

''(i) the recipient annually publishes, by electronic and other appropriate means, a notice—

''(I) indicating its intent to offer incidental charter bus service within its lawful service area; and

''(II) soliciting notices from private bus operators that wish to appear on a list of carriers offering charter bus service in that service area;

''(ii) the recipient provides private bus operators with an annual opportunity to notify the recipient of its desire to appear on a list of carriers offering charter bus service in such service area;

''(iii) upon receiving a request for charter bus service, the recipient electronically notifies the private bus operators listed as offering charter service in that service area with the name and contact information of the requestor and the nature of the charter service request; and

''(iv) the recipient does not offer to provide charter bus service unless no private bus operator indicates that it is willing and able to provide the service within a 72-hour period after the receipt of such notice.

''(B) EXCEPTION.—A recipient that operates 2,000 or fewer vehicles in fixed-route peak hour service may provide incidental charter bus transportation directly to—

''(i) local governments; and

''(ii) social service entities with limited resources.

''(C) IRREGULARLY SCHEDULED EVENTS.—Service, other than commuter service, by a recipient to irregularly scheduled events, where the service is conducted in whole or in part outside the service area of the recipient, regardless of whether the service is contracted for individually with passengers, is subject to a rebuttable presumption that such service is charter service.

''(2) VIOLATION OF AGREEMENTS.—

''(A) COMPLAINTS.—A complaint regarding the violation of a charter bus service agreement shall be submitted to the Regional Administrator of the Federal Transit Administration, who shall—

''(i) provide a reasonable opportunity for the recipient to respond to the complaint;

''(ii) provide the recipient with an opportunity for an informal hearing; and

''(iii) issue a written decision not later than 60 days after the parties have completed their submissions.

''(B) APPEALS.—

''(i) IN GENERAL.—A decision by the Regional Administrator may be appealed to a panel comprised of the Federal Transit Administrator, personnel in the Office of the Secretary of Transportation, and other persons with expertise in surface passenger transportation issues.

''(ii) STANDARD OF REVIEW.—The panel described in clause (i) shall consider the complaint de novo on all issues of fact and law.

''(iii) WRITTEN DECISION.—The appeals panel shall issue a written decision on an appeal not later than 60 days after the completion of submissions. This decision shall be the final order of the agency and subject to judicial review in district court.

''(C) CORRECTION.—If the Secretary determines that a violation of an agreement relating to the provision of charter service has occurred, the Secretary shall correct the violation under terms of the agreement.

''(D) REMEDIES.—The Secretary may issue orders to recipients to cease and desist in actions that violate the agreement, and such orders shall be binding upon the parties. In addition to any remedy spelled out in the agreement, if a recipient has failed to correct a violation within 60 days after the receipt of a notice of violation from the Secretary, the Secretary shall withhold from the recipient the lesser of—

''(i) 5 percent of the financial assistance available to the recipient under this chapter for the next fiscal year; or

''(ii) $200,000.

''(3) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue amended regulations that—

''(A) implement this subsection, as revised by such Act; and

''(B) impose restrictions, procedures, and remedies in connection with sightseeing service by a recipient.

''(4) PUBLIC NOTICE.—The Secretary shall make all written decisions, guidance, and other pertinent materials relating to the procedures in this subsection available to the public in electronic and other appropriate formats in a timely manner.'';

(5) by striking subsection (e);

(6) by redesignating subsection (f) as subsection (e);

(7) in subsection (e), as redesignated—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—'';

(B) by striking paragraph (2);

(C) by striking ''This subsection'' and inserting the following:

''(2) EXCEPTIONS.—This subsection; and

(D) by adding at the end the following:

''(3) PENALTY.—If the Secretary determines that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar the applicant, authority, or operator from receiving Federal transit assistance in an amount the Secretary determines to be appropriate.'';

(8) by inserting after subsection (e) the following:

''(f) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309, may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

''(2) REIMBURSEMENT BY SECRETARY.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient established pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309.'';

(9) in subsection (g)—

(A) by striking ''(f)'' each place it appears and inserting ''(e)''; and

(B) by striking ''103(e)(4) and 142 (a) or (c)'' each place it appears and inserting ''133 and 142'';

(10) by amending subsection (h) to read as follows:

''(h) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

(1) REQUEST BY SECRETARY.—If the Secretary determines that any part of the lands or interests in lands owned by the United States and made available as a result of a military base closure is necessary for transit purposes eligible under this chapter, including corridor preservation, the Secretary shall submit a request to the head of the Federal agency supervising the administration of such lands or interests in lands. Such request shall include a map showing the portion of such lands or interests in lands, which is desired to be transferred for public transportation purposes.

''(2) TRANSFER OF LAND.—If 4 months after submitting a request under paragraph (1), the Secretary does not receive a response from the Federal agency described in paragraph (1) that certifies that the proposed appropriation of land is contrary to the public interest or inconsistent with the purposes for which such land has been reserved, or if the head of such agency agrees to the utilization or transfer under conditions necessary for the adequate protection and utilization of the reserve, such land or interests in land may be utilized or transferred to a State, local governmental authority, or public transportation operator for such purposes and subject to the conditions specified by such agency.

''(3) REVERSION.—If at any time the lands or interests in land utilized or transferred under paragraph (2) are no longer needed for public transportation purposes, the State, local governmental authority, or public transportation operator that received the land shall notify to the Secretary, and such lands shall immediately revert to the control of the head of the Federal agency from which the land was originally transferred.'';

(11) in subsection (j)(5), by striking ''Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)'' and inserting ''Federal Public Transportation Act of 2004'';

(12) by amending subsection (*l*) to read as follows:

''(*l*) RELATIONSHIP TO OTHER LAWS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter, if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal transit program.'';

(13) in subsection (m), by inserting at the end the following: ''Requirements to perform preaward and postdelivery reviews of rolling stock purchases to ensure compliance with subsection (j) shall not apply to private nonprofit organizations or to grantees serving urbanized areas with a population of fewer than 1,000,000.'';

(14) in subsection (*o*), by striking ''assistance or other financing under the Transportation Infrastructure Finance and Innovation Act of 1998'' and inserting ''a loan or loan guarantee under title 23''; and

(15) by adding at the end the following:

''(p) PROHIBITED USE OF FUNDS.—Grant funds received under this chapter may not be used to pay ordinary governmental or nonproject operating expenses.''.

SEC. 3023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

(a) IN GENERAL.—Section 5324 is amended to read as follows:

''§ 5324. Special provisions for capital projects

''(a) REAL PROPERTY AND RELOCATION SERVICES.—Whenever real property is acquired or furnished as a required contribution incident to a project, the Secretary shall not approve the application for financial assistance unless the applicant has made all payments and provided all assistance and assurances that are required of a State agency under sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630 and 4655). The Secretary must be advised of specific references to any State law that are believed to be an exception to section 301 or 302 of such Act (42 U.S.C. 4651 and 4652).

''(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

(1) IN GENERAL.—The Secretary may participate in the acquisition of real property before the completion of the environmental reviews for any project that may use the property if the Secretary determines that external market forces are jeopardizing the potential use of the property for the project and if—

''(A) there are offers on the open real estate market to convey that property for a use that is incompatible with the project under study;

''(B) there is an imminent threat of development or redevelopment of the property for a use that is incompatible with the project under study;

''(C) recent appraisals reflect a rapid increase in the fair market value of the property;

''(D) the property, because it is located near an existing transportation facility, is likely to be developed and to be needed for a future transportation improvement; or

''(E) the property owner can demonstrate that, for health, safety, or financial reasons, retaining ownership of the property poses an undue hardship on the owner in comparison to other affected property owners and requests the acquisition to alleviate that hardship.

''(2) PROTECTION OF PUBLIC LANDS.—Property acquired in accordance with this subsection may not be developed in anticipation of the project unless the Secretary has complied with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for protection of publicly owned park lands, wildlife and waterfowl refuges, and historic sites.

''(3) LIMITATION.—The Secretary shall limit the size and number of properties acquired under this subsection as necessary to avoid any prejudice to the Secretary's objective evaluation of project alternatives.

''(4) EXEMPTION.—An acquisition under this section shall be considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

''(c) RAILROAD CORRIDOR PRESERVATION.—

''(1) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

''(2) PROTECTION OF PUBLIC LANDS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until the Secretary has complied with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for protection of publicly owned park lands, wildlife and waterfowl refuges, and historic sites.

''(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

''(1) IN GENERAL.—The Secretary may not approve an application for financial assistance for a capital project under this chapter unless the Secretary determines that the project has been developed in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary's findings under this paragraph shall be made a matter of public record.

''(2) COOPERATION AND CONSULTATION.—In carrying out section 5301(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 is amended to read as follows:

''5324. Special provisions for capital projects.''.

SEC. 3024. CONTRACT REQUIREMENTS.

(a) IN GENERAL.—Section 5325 is amended to read as follows:

''§ 5325. Contract requirements

''(a) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

''(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

''(1) IN GENERAL.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

''(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

''(A) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

''(B) A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

''(C) After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

''(D) A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

''(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

''(d) DESIGN-BUILD PROJECTS.—

''(1) DEFINED TERM.—As used in this subsection, the term 'design-build project'—

''(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build an operable segment of a public transportation system that meets specific performance criteria; and

''(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

''(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

''(e) ROLLING STOCK.—

''(1) ACQUISITION.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

''(A) with a party selected through a competitive procurement process; or

''(B) based on—

''(i) initial capital costs; or

''(ii) performance, standardization, life cycle costs, and other factors.

''(2) MULTIYEAR CONTRACTS.—A recipient procuring rolling stock with Federal financial assistance under this chapter may make a multiyear contract, including options, to buy not more than 5 years of requirements for rolling stock and replacement parts. The Secretary shall allow a recipient to act on a cooperative basis to procure rolling stock under this paragraph and in accordance with other Federal procurement requirements.

''(f) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

''(g) GRANT PROHIBITION.—A grant awarded under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

''(h) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

''(i) AWARDS TO RESPONSIBLE CONTRACTORS.—

''(1) IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

''(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

''(A) the integrity of the contractor;

''(B) the contractor's compliance with public policy;

''(C) the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(m)(4); and

''(D) the contractor's financial and technical resources.''.

(b) CONFORMING AMENDMENTS.—Chapter 53 is amended by striking section 5326.

SEC. 3025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—Section 5327(a) is amended—

(1) in paragraph (11), by striking ''and'' at the end;

(2) in paragraph (12), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(13) safety and security management.''.

(b) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary may not use more than 1 percent of amounts made available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91–143) to make a contract to oversee the construction of major projects under any of sections 5307 through 5311, 5316, or 5317 or under that Act.'';

(2) in paragraph (2)—

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

''(2) OTHER ALLOWABLE USES.—''; and

(B) by inserting ''and security'' after ''safety''; and

(3) in paragraph (3), by striking ''(3) The Government shall'' and inserting the following:

''(3) FEDERAL SHARE.—Federal funds shall be used to''.

SEC. 3026. PROJECT REVIEW.

Section 5328 is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking ''(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant'' and inserting the following:

''(1) APPROVAL OF DRAFT ENVIRONMENTAL IMPACT STATEMENT.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis under subsections (e) and (f) of section 5309'';

(B) in paragraph (2)—

(i) by striking ''(2)'' and inserting the following:

''(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—''; and

(ii) by striking ''is consistent with'' and inserting ''meets the requirements of'';

(C) in paragraph (3)—

(i) by striking ''(3)'' and inserting the following:

''(3) RECORD OF DECISION.—'';

(ii) by striking ''of construction''; and

(iii) by adding before the period at the end the following: ''if the Secretary determines that the project meets the requirements of subsections (e) and (f) of section 5309''; and

(D) by striking paragraph (4); and

(2) by striking subsection (c).

SEC. 3027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

''§ 5329. Investigation of safety hazards and security risks

''(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

''(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary establishes that a safety hazard or security risk warrants further protective measures, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for eliminating, mitigating, or correcting it.

''(c) WITHHOLDING OF FUNDS.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5329 in the table of sections for chapter 53 is amended to read as follows:

''5329. Investigation of safety hazards and security risks.''.

SEC. 3028. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by amending the heading to read as follows:

''§ 5330. Withholding amounts for noncompliance with State safety oversight requirements'';

(2) by amending subsection (a) to read as follows:

''(a) APPLICATION.—This section shall only apply to—

''(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

''(2) States that are designing rail fixed guideway public transportation systems that will not be subjected to regulation by the Federal Railroad Administration.'';

(3) in subsection (d), by striking ''affected States'' and inserting the following: ''affected States—

''(1) shall ensure uniform safety standards and enforcement; or

''(2) may designate''; and

(4) in subsection (f), by striking ''Not later than December 18, 1992, the'' and inserting ''The''.

(b) CONFORMING AMENDMENT.—The item relating to section 5330 in the table of sections for chapter 53 is amended to read as follows:

''5330. Withholding amounts for noncompliance with State safety oversight requirements.''.

SEC. 3029. SENSITIVE SECURITY INFORMATION.

Section 40119(b) is amended—

(1) in paragraph (1)(C), by inserting '', transportation facilities or infrastructure, or transportation employees'' before the period at the end; and

(2) by adding at the end the following:

''(3) A State or local government may not enact, enforce, prescribe, issue, or continue in effect any law, regulation, standard, or order to the extent it is inconsistent with this section or regulations prescribed under this section.''.

SEC. 3030. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Section 1993 of title 18, United States Code, is amended—

(1) by striking ''mass'' each place it appears and inserting ''public'';

(2) in subsection (a)(5), by inserting ''controlling,'' after ''operating''; and

(3) in subsection (c)(5), by striking ''5302(a)(7) of title 49, United States Code,'' and inserting ''5302(a) of title 49,''.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 97 of title 18, United States Code is amended by amending the item related to section 1993 to read as follows:

''1993. Terrorist attacks and other acts of violence against public transportation systems.''.

SEC. 3031. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(3), by inserting before the period at the end the following: ''or sections 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or other Federal agency''; and

(2) in subsection (f), by striking paragraph (3).

SEC. 3032. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 5333(b) is amended—

(1) in paragraph (3), by striking the period at the end and inserting '', if—

''(A) the protective period does not exceed 4 years; and

''(B) the separation allowance does not exceed 12 months.''; and

(2) by adding at the end the following:

''(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (2).

''(5) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and amendments to existing assistance agreements, shall be certified without referral.''.

SEC. 3033. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''5309–5311 of this title'' and all that follows and inserting ''5309 through 5311;'';

(B) in paragraph (9), by striking ''and'' at the end;

(C) in paragraph (10), by striking the period at the end and inserting ''; and''; and

(D) by inserting at the end the following:

''(11) issue regulations as necessary to carry out the purposes of this chapter.'';

(2) by redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively;

(3) by adding after subsection (a) the following:

''(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

''(1) IN GENERAL.—Except as directed by the President for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate—

''(A) the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter; or

''(B) the rates, fares, tolls, rentals, or other charges prescribed by any public or private transportation provider.

''(2) COMPLIANCE WITH AGREEMENT.—Nothing in this subsection shall prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.''; and

(4) in subsection (j)(1), as redesignated, by striking ''carry out section 5312(a) and (b)(1) of this title'' and inserting ''advise and assist the Secretary in carrying out section 5312(a)''.

SEC. 3034. REPORTS AND AUDITS.

Section 5335 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1)''; and

(B) in paragraph (2), by striking ''(2) The Secretary may make a grant under section 5307 of this title'' and inserting the following:

''(b) REPORTING AND UNIFORM SYSTEMS.—The Secretary may award a grant under section 5307 or 5311''.

SEC. 3035. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 is amended—

(1) by striking subsection (d);

(2) by striking subsection (h);

(3) by striking subsection (k);

(4) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(5) by adding before subsection (b), as redesignated, the following:

''(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(L) of section 5338—

''(1) there shall be apportioned, in fiscal year 2005 and each fiscal year thereafter, $35,000,000 to certain urbanized areas with populations of less than 200,000 in accordance with subsection (k); and

''(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (b) through (d).'';

(6) in subsection (b), as redesignated—

(A) by striking ''Of the amount made available or appropriated under section 5338(a) of this title'' and inserting ''Of the amount apportioned under subsection (a)(3)''; and

(B) in paragraph (2), by striking ''subsections (b) and (c) of this section'' and inserting ''subsections (c) and (d)'';

(7) in subsection (c)(2), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(8) in subsection (d), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(9) in subsection (e)(1), by striking ''subsections (a) and (h)(2) of section 5338 of this title'' and inserting ''subsections (a) and (b) of section 5338'';

(10) in subsection (g), by striking ''subsection (a)(1) of this section'' each place it appears and inserting ''subsection (b)(1)''; and

(11) by adding at the end the following:

''(k) SMALL TRANSIT INTENSIVE CITIES FACTORS.—

''(1) APPORTIONMENT BASED UPON REVENUE VEHICLE MILES.—Of the amount apportioned under subsection (a)(1), one-third shall be apportioned to urbanized areas as follows:

''(A) The Secretary shall calculate a factor equal to the sum of revenue vehicle miles operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

''(B) The Secretary shall designate as eligible for an apportionment under this paragraph all urbanized areas with a population of under 200,000 for which the number of revenue vehicle miles operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under subparagraph (A).

''(C) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under subparagraph (A).

''(D) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle miles within that urbanized area less the amount calculated in subparagraph (C).

''(E) Each urbanized area qualifying for an apportionment under subparagraph (B) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under subparagraph (D) divided by the sum of the amounts calculated under subparagraph (D) for all urbanized areas qualifying for an apportionment under subparagraph (B).

''(2) APPORTIONMENT BASED UPON REVENUE VEHICLE HOURS.—Of the amount apportioned under subsection (a)(1), one-third shall be apportioned to urbanized areas as follows:

''(A) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

''(B) The Secretary shall designate as eligible for an apportionment under this paragraph all urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under subparagraph (A).

''(C) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under subparagraph (A).

''(D) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle hours within that urbanized area less the amount calculated in subparagraph (C).

''(E) Each urbanized area qualifying for an apportionment under subparagraph (B) shall

receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under subparagraph (D) divided by the sum of the amounts calculated under subparagraph (D) for all urbanized areas qualifying for an apportionment under subparagraph (B).

''(3) APPORTIONMENT BASED UPON PASSENGER MILES.—Of the amount apportioned under subsection (a)(1), one-third shall be apportioned to urbanized areas as follows:

''(A) The Secretary shall calculate a factor equal to the sum of passenger miles consumed within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

''(B) The Secretary shall designate as eligible for an apportionment under this paragraph all urbanized areas with a population of under 200,000 for which the number of passenger miles consumed within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under subparagraph (A).

''(C) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under subparagraph (A).

''(D) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the difference between the number of passenger miles consumed within that urbanized area less the amount calculated in subparagraph (C).

''(E) Each urbanized area qualifying for an apportionment under subparagraph (B) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under subparagraph (D) divided by the sum of the amounts calculated under subparagraph (D) for all urbanized areas qualifying for an apportionment under subparagraph (B).

''(*l*) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

''(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

''(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

''(ii) the optimal number and size of any incentive programs;

''(iii) what types of systems should compete for various incentives;

''(iv) how incentives should be distributed; and

''(v) the likely effects of the incentive funding system.''.

SEC. 3036. APPORTIONMENTS FOR FIXED GUIDEWAY MODERNIZATION.

Section 5337 is amended—

(1) in subsection (a), by striking ''for each of fiscal years 1998 through 2003''; and

(2) by striking ''section 5336(b)(2)(A)'' each place it appears and inserting ''section 5336(c)(2)(A)''.

SEC. 3037. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

''§ 5338. Authorizations

''(a) FISCAL YEAR 2004.—

''(1) FORMULA GRANTS.—

''(A) TRUST FUND.—For fiscal year 2004, $3,013,315,920 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $753,328,980 for fiscal year 2004 to carry out sections 5307, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $4,821,335 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

''(ii) $6,908,995 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(iii) $90,117,950 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

''(iv) $239,188,058 shall be available to provide financial assistance for other than urbanized areas under section 5311; and

''(v) $3,425,608,562 shall be available to provide financial assistance for urbanized areas under section 5307.

''(2) JOB ACCESS AND REVERSE COMMUTE.—

''(A) TRUST FUND.—For fiscal year 2004, $83,504,400 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 3037 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note).

''(B) GENERAL FUND.—In addition to the amounts made available under paragraph (A), there are authorized to be appropriated $20,876,100 for fiscal year 2004 to carry out section 3037 of the Transportation Equity Act of the 21st Century (49 U.S.C. 5309 note).

''(3) CAPITAL PROGRAM GRANTS.—

''(A) TRUST FUND.—For fiscal year 2004, $2,550,860,600 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $637,715,150 for fiscal year 2004 to carry out section 5309.

''(4) PLANNING.—

''(A) TRUST FUND.—For fiscal year 2004, $58,055,440 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5308.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $14,513,860 for fiscal year 2004 to carry out section 5308.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) 82.72 percent shall be allocated for metropolitan planning under section 5308(c); and

''(ii) 17.28 percent shall be allocated for State planning under section 5308(d).

''(5) RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2004, $42,149,840 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $10,537,460 for fiscal year 2004 to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(C) ALLOCATION OF FUNDS.—Of the funds made available or appropriated under this paragraph—

''(i) not less than $3,976,400 shall be available to carry out programs of the National Transit Institute under section 5315;

''(ii) not less than $5,219,025 shall be available to carry out section 5311(b)(2);

''(iii) not less than $8,201,325 shall be available to carry out section 5313; and

''(iv) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

''(6) UNIVERSITY TRANSPORTATION RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2004, $4,771,680 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5505 and 5506.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $1,192,920 for fiscal year 2004 to carry out sections 5505 and 5506.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $1,988,200 shall be available for grants under 5506(f)(5) to the institution identified in section 5505(j)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2004;

''(ii) $1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(A), as in effect on the date specified in clause (i); and

''(iii) $1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(F), as in effect on the date specified in subclause (I).

''(C) SPECIAL RULE.—Nothing in this paragraph shall be construed to limit the transportation research conducted by the centers receiving financial assistance under this section.

''(7) ADMINISTRATION.—

''(A) TRUST FUND.—For fiscal year 2004, $60,043,640 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $15,010,910 for fiscal year 2004 to carry out section 5334.

''(8) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(A) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available under paragraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(B) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance under paragraph (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or (7)(B) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

''(9) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.''.

''(b) FORMULA GRANTS AND RESEARCH.—

''(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307,

5308, 5309, 5310 through 5316, 5322, 5335, 5339, and 5505 of this title, and sections 3037 and 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

''(A) $6,262,600,000 for fiscal year 2005;

''(B) $6,577,629,000 for fiscal year 2006;

''(C) $6,950,400,000 for fiscal year 2007;

''(D) $7,594,760,000 for fiscal year 2008; and

''(E) $8,275,320,000 for fiscal year 2009.

''(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1) for each fiscal year—

''(A) 0.92 percent shall be available for grants to the Alaska Railroad under section 5307 for improvements to its passenger operations;

''(B) 1.75 percent shall be available to carry out section 5308;

''(C) 2.05 percent shall be available to provide financial assistance for job access and reverse commute projects under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note);

''(D) 3.00 percent shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

''(E) 0.125 percent shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(F) 6.25 percent shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(G) 0.89 percent shall be available to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5505, and national research programs under sections 5312, 5313, 5314, and 5322, of which—

''(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5313;

''(ii) 7.5 percent shall be allocated to carry out programs under the National Transit Institute under section 5315, including not more than $1,000,000 to carry out section 5315(a)(16);

''(iii) 11.0 percent shall be allocated to carry out the university centers program under section 5505; and

''(iv) any funds made available under this subparagraph that are not allocated under clauses (i) through (iii) shall be allocated to carry out national research programs under sections 5312, 5313, 5314, and 5322;

''(H) $25,000,000 shall be available for each of the fiscal years 2005 through 2009 to carry out section 5316;

''(I) there shall be available to carry out section 5335—

''(i) $3,700,000 in fiscal year 2005;

''(ii) $3,900,000 in fiscal year 2006;

''(iii) $4,200,000 in fiscal year 2007;

''(iv) $4,600,000 in fiscal year 2008; and

''(v) $5,000,000 in fiscal year 2009;

''(J) 6.25 percent shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and

''(K) 22.0 percent shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(i)(3); and

''(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

''(3) UNIVERSITY CENTERS PROGRAM.—

''(A) ALLOCATION.—Of the amounts allocated under paragraph (2)(G)(iii), $1,000,000 shall be available in each of the fiscal years 2005 through 2009 for Morgan State University to provide transportation research, training, and curriculum development.

''(B) REQUIREMENTS.—The university specified under subparagraph (A) shall be considered a University Transportation Center under section 510 of title 23, and shall be subject to the requirements under subsections (c), (d), (e), and (f) of such section.

''(C) REPORT.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university's contribution to public transportation.

''(4) BUS GRANTS.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309(i)(2)(B)—

''(A) $839,829,000 for fiscal year 2005;

''(B) $882,075,000 for fiscal year 2006;

''(C) $932,064,000 for fiscal year 2007;

''(D) $1,018,474,000 for fiscal year 2008; and

''(E) $1,109,739,000 for fiscal year 2009.

''(c) MAJOR CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(i)(2)(A)—

''(1) $1,461,072,000 for fiscal year 2005;

''(2) $1,534,568,000 for fiscal year 2006;

''(3) $1,621,536,000 for fiscal year 2007;

''(4) $1,771,866,000 for fiscal year 2008; and

''(5) $1,930,641,000 for fiscal year 2009.

''(d) ADMINISTRATION.—There are authorized available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

''(1) $86,500,000 for fiscal year 2005;

''(2) $90,851,000 for fiscal year 2006;

''(3) $96,000,000 for fiscal year 2007;

''(4) $104,900,000 for fiscal year 2008; and

''(5) $114,300,000 for fiscal year 2009.

''(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(1) MASS TRANSIT ACCOUNT FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1) or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(2) APPROPRIATED FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(2) or (c) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated in advance for such purpose by an Act of Congress.

''(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (b) and (c) shall remain available until expended.''.

SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS.

(a) IN GENERAL.—Chapter 53 is amended by adding at the end the following:

''§ 5340. Apportionments based on growing States and high density State formula factors

''(a) ALLOCATION.—Of the amounts made available for each fiscal year under section 5338(b)(2)(J), the Secretary shall apportion—

''(1) 50 percent to States and urbanized areas in accordance with subsection (b); and

''(2) 50 percent to States and urbanized areas in accordance with subsection (c).

''(b) GROWING STATE APPORTIONMENTS.—

''(1) APPORTIONMENT AMONG STATES.—The amounts apportioned under paragraph (a)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census.

''(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (b)(2)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (b)(2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.

''(c) HIGH DENSITY STATE APPORTIONMENTS.—Amounts to be apportioned under subsection (a)(2) shall be apportioned as follows:

''(1) ELIGIBLE STATES.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

''(2) STATE URBANIZED LAND FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the product of the urban land area of urbanized areas in the State times 370 persons per square mile.

''(3) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).

''(4) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).

''(5) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts apportioned to each State under paragraph (4) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the population of all urbanized areas in that State divided by the total population of that State.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (a) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(6) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (c)(5)(A) so that each urbanized area receives

an amount equal to the amount apportioned under subsection (c)(5)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following:

''5340. Apportionments based on growing States and high density States formula factors.''.

SEC. 3039. JOB ACCESS AND REVERSE COMMUTE GRANTS.

Section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking ''means an individual'' and inserting the following: ''means—

''(A) an individual''; and

(ii) by striking the period at the end and inserting ''; or

''(B) an individual who is eligible for assistance under the State program of Temporary Assistance to Needy Families funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et. seq.) in the State in which the recipient of a grant under this section is located.''; and

(B) in paragraph (2), by striking ''development of'' each place it appears and inserting ''development and provision of'';

(2) in subsection (i), by amending paragraph (2) to read as follows:

''(2) COORDINATION.—

''(A) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

''(B) CERTIFICATION.—A recipient of funds under this section shall certify that—

''(i) the project has been derived from a locally developed, coordinated public transit human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.'';

(3) by amending subsection (j) to read as follows:

''(j) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) URBANIZED AREAS.—A grant awarded under this section to a public agency or private company engaged in public transportation in an urbanized area shall be subject to the all of the terms and conditions to which a grant awarded under section 5307 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(B) OTHER THAN URBANIZED AREAS.—A grant awarded under this section to a public agency or a private company engaged in public transportation in an area other than urbanized areas shall be subject to all of the terms and conditions to which a grant awarded under section 5311 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(C) NONPROFIT ORGANIZATIONS.—A grant awarded under this section to a private nonprofit organization shall be subject to all of the terms and conditions to which a grant made under section 5310 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(2) SPECIAL WARRANTY.—

''(A) IN GENERAL.—Section 5333(b) of title 49, United States Code, shall apply to grants under this section if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees.

''(B) WAIVER.—The Secretary may waive the applicability of the Special Warranty under subparagraph (A) for private non-profit recipients on a case-by-case basis as the Secretary considers appropriate.''; and

(4) by striking subsections (k) and (*l*).

SEC. 3040. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

(a) SECTION HEADING.—The section heading for section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note), is amended to read as follows:

''SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.''.

(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

''(g) FUNDING.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(iii) and (b)(2)(E) of section 5338 of title 49, United States Code—

''(1) 75 percent shall be available, and shall remain available until expended, for operators of over-the-road buses, used substantially or exclusively in intercity, fixed-route over-the-road bus service, to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses; and

''(2) 25 percent shall be available, and shall remain available until expended, for operators of over-the-road bus service not described in paragraph (1), to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses.''.

(b) CONFORMING AMENDMENT.—The item relating to section 3038 in the table of contents for the Transportation Equity Act for the 21st Century (Public Law 105–178) is amended to read as follows:

''Sec. 3038. Over-the-road bus accessibility program.''.

SEC. 3041. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5315 the following:

''§ 5316. Alternative transportation in parks and public lands

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—

''(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award a grant or enter into a contract, cooperative agreement, interagency agreement, intraagency agreement, or other transaction to carry out a qualified project under this section to enhance the protection of America's National Parks and public lands and increase the enjoyment of those visiting the parks and public lands by ensuring access to all, including persons with disabilities, improving conservation and park and public land opportunities in urban areas through partnering with state and local governments, and improving park and public land transportation infrastructure.

''(B) CONSULTATION WITH OTHER AGENCIES.—To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary of the Interior shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under this section.

''(2) USE OF FUNDS.—A grant, cooperative agreement, interagency agreement, intraagency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

''(b) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) ELIGIBLE AREA.—The term 'eligible area' means any federally owned or managed park, refuge, or recreational area that is open to the general public, including—

''(A) a unit of the National Park System;

''(B) a unit of the National Wildlife Refuge System;

''(C) a recreational area managed by the Bureau of Land Management; and

''(D) a recreation area managed by the Bureau of Reclamation.

''(2) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area.

''(3) ALTERNATIVE TRANSPORTATION.—The term 'alternative transportation' means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service.

''(4) QUALIFIED PARTICIPANT.—The term 'qualified participant' means—

''(A) a Federal land management agency; or

''(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other Governmental or nongovernmental participant.

''(5) QUALIFIED PROJECT.—The term 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—

''(A) is an activity described in section 5302, 5303, 5304, 5308, or 5309(a)(1)(A);

''(B) involves—

''(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of this section with clean fuel vehicles; or

''(ii) the deployment of alternative transportation vehicles that introduce innovative technologies or methods;

''(C) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;

''(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);

''(E) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

''(F) is any other alternative transportation project that—

''(i) enhances the environment;

''(ii) prevents or mitigates an adverse impact on a natural resource;

''(iii) improves Federal land management agency resource management;

''(iv) improves visitor mobility and accessibility and the visitor experience;

''(v) reduces congestion and pollution (including noise pollution and visual pollution); or

''(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

''(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

''(1) technical assistance in alternative transportation;

''(2) interagency and multidisciplinary teams to develop Federal land management

agency alternative transportation policy, procedures, and coordination; and

''(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

''(d) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(a)(2)(I) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

''(2) ADDITIONAL AMOUNTS.—Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this title or any other provision of law.

''(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5338(a)(2)(I) for any fiscal year.

''(e) PLANNING PROCESS.—In undertaking a qualified project under this section,

''(1) if the qualified participant is a Federal land management agency—

''(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

''(i) the metropolitan planning provisions under section 5303 of this title;

''(ii) the statewide planning provisions under section 5304 of this title; and

''(iii) the public participation requirements under section 5307(e); and

''(B) in the case of a qualified project that is at a unit of the National Park system, the planning process shall be consistent with the general management plans of the unit of the National Park system; and

''(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

''(A) comply with the metropolitan planning provisions under section 5303 of this title;

''(B) comply with the statewide planning provisions under section 5304 of this title;

''(C) comply with the public participation requirements under section 5307(e) of this title; and

''(D) consult with the appropriate Federal land management agency during the planning process.

''(f) COST SHARING.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, shall establish the agency share of net project cost to be provided under this section to a qualified participant.

''(2) In establishing the agency share of net project cost to be provided under this section, the Secretary shall consider—

''(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

''(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

''(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

''(D) the clear and direct benefit to the qualified participant; and

''(E) any other matters that the Secretary considers appropriate to carry out this section.

''(3) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

''(g) SELECTION OF QUALIFIED PROJECTS.—

''(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

''(2) In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

''(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

''(B) the location of the qualified project, to ensure that the selected qualified projects—

''(i) are geographically diverse nationwide; and

''(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

''(C) the size of the qualified project, to ensure that there is a balanced distribution;

''(D) the historical and cultural significance of a qualified project;

''(E) safety;

''(F) the extent to which the qualified project would-

''(i) enhance livable communities;

''(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

''(iii) reduce congestion; and

''(iv) improve the mobility of people in the most efficient manner; and

''(G) any other matters that the Secretary considers appropriate to carry out this section, including-

''(i) visitation levels;

''(ii) the use of innovative financing or joint development strategies; and

''(iii) coordination with gateway communities.

''(h) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

''(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

''(A) the qualified participant applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

''(2)(A) The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

''(B) The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

''(C) The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

''(i) RELATIONSHIP TO OTHER LAWS.—

''(1) SECTION 5307.—A qualified participant under this section shall be subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

''(2) OTHER REQUIREMENTS.—A qualified participant under this section is subject to any other terms, conditions, requirements, and provisions that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

''(3) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than $25,000,000—

''(A) the qualified project shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement, in accordance with section 5309(g); and

''(B) the qualified participant shall prepare a project management plan in accordance with section 5327(a).

''(i) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

''(j) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other transactions for research, development, and deployment of new technologies in eligible areas that will—

''(A) conserve resources;

''(B) prevent or mitigate adverse environmental impact;

''(C) improve visitor mobility, accessibility, and enjoyment; and

''(D) reduce pollution (including noise pollution and visual pollution).

''(2) The Secretary may request and receive appropriate information from any source.

''(3) Grants, cooperative agreements, contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

''(k) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a state infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

''(*l*) REPORTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

''(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(B) the Committee on Transportation and Infrastructure of the House of Representatives.

''(2) ANNUAL AND SUPPLEMENTAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(m).''.

(b) CONFORMING AMENDMENTS.—The table of sections for chapter 53 is amended by inserting after the item relating to section 5315 the following:

''5316. Alternative transportation in parks and public lands.''.

SEC. 3042. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (c) of section 5338 of title 49, United States Code, shall not exceed—

(1) $7,265,876,900 for fiscal year 2004;

(2) $8,650,000,000 for fiscal year 2005;

(3) $9,085,123,000 for fiscal year 2006;

(4) $9,600,000,000 for fiscal year 2007;

(5) $10,490,000,000 for fiscal year 2008; and

(6) $11,430,000,000 for fiscal year 2009.

SEC. 3043. ADJUSTMENTS FOR THE SURFACE TRANSPORTATION EXTENSION ACT OF 2003.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2004 to each grant recipient under section 5338 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2003 (117 Stat. 1121).

(b) FIXED GUIDEWAY MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amount apportioned for fiscal year 2004 to each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in 5337(a) of title 49, United States Code.

SA 2270. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new section:

SEC. ___. FUNDS FOR REBUILDING FISH STOCKS.

Section 105 of the Miscellaneous Appropriations and Offsets Act, 2004 (division H of the Consolidated Appropriations Act, 2004) is repealed.

SA 2271. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 806, strike line 5 and insert the following:

SEC. 1514. PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES.

(a) PROGRAMS AND PROJECTS WITH DE MINIMIS IMPACTS.—

(1) TITLE 23.—Section 138 of title 23, United States Code, is amended—

(A) in the first sentence, by striking ''It is hereby'' and inserting the following:

''(a) DECLARATION OF POLICY.—It is''; and

(B) by adding at the end the following:

''(b) DE MINIMIS IMPACTS.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

''(B) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

''(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

''(i) the transportation program or project will have no adverse effect on the historic site; or

''(ii) there will be no historic properties affected by the transportation program or project;

''(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

''(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

''(3) PARKS, RECREATION AREAS, AND WILDLIFE AND WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (including public notice and opportunity for public review and comment), that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this title; and

''(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.''.

(2) TITLE 49.—Section 303 of title 49, United States Code, is amended—

(A) by striking ''(c) The Secretary'' and inserting the following:

''(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsection (d), the Secretary''; and

(B) by adding at the end the following:

''(d) DE MINIMIS IMPACTS.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

''(B) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

''(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

''(i) the transportation program or project will have no adverse effect on the historic site; or

''(ii) there will be no historic properties affected by the transportation program or project;

''(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

''(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

''(3) PARKS, RECREATION AREAS, AND WILDLIFE AND WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (including public notice and opportunity for public review and comment), that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this title; and

''(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.''.

(b) CLARIFICATION OF EXISTING STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

(2) REQUIREMENTS.—The regulations—

(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decisionmakers.

(c) IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Secretary and the Transportation Research Board of the National Academy of Sciences shall jointly conduct a study on the implementation of this section and the amendments made by this section.

(2) COMPONENTS.—In conducting the study, the Secretary and the Transportation Research Board shall evaluate—

(A) the processes developed under this section and the amendments made by this section and the efficiencies that may result;

(B) the post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects conducted under this section and the amendments made by this section; and

(C) the quantity of projects with impacts that are considered de minimis under this section and the amendments made by this section, including information on the location, size, and cost of the projects.

(3) REPORT REQUIREMENT.—The Secretary and the Transportation Research Board shall prepare—

(A) not earlier than the date that is 4 years after the date of enactment of this Act, a report on the results of the study conducted under this subsection; and

(B) not later than September 30, 2009, an update on the report required under subparagraph (A).

(4) REPORT RECIPIENTS.—The Secretary and the Transportation Research Board shall—

(A) submit the report and update required under paragraph (3) to—

(i) the appropriate committees of Congress;

(ii) the Secretary of the Interior; and

(iii) the Advisory Council on Historic Preservation; and

(B) make the report and update available to the public.

SEC. 1515. REGULATIONS.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet on Thursday, February 5, 2004, at 10 a.m., in room 2141 of the Rayburn House Office Building to consider judicial nominations.

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

PRIVILEGES OF THE FLOOR

Mr. GRASSLEY. Madam President, I have a unanimous consent request from Senator BAUCUS for people to be on the floor. I ask unanimous consent that the following interns for the Senate Finance Committee be granted floor privileges for the remainder of the debate on the highway bill: Jane Bergeson, Shannon Augure, Jeremy Sieglitz, Tyson Hill, Simon Chabel, and Trace Thaxton.

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

Mr. SHELBY. Mr. President, I also ask unanimous consent that Rich Steinmann and Kate Mattice, detailees from the Federal Transit Administration serving the Banking Committee, be granted floor privileges for the duration of the consideration of this bill.

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

Mr. JEFFORDS. Mr. President, I ask unanimous consent that Peter Smallwood, a fellow in the office of Senator LIEBERMAN, be granted the privilege of the floor for the consideration of S. 1072, the highway bill.

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

ORDERS FOR FRIDAY, FEBRUARY 6, 2004

Mr. INHOFE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Friday, February 6. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of S. 1072, the highway bill, for the purpose of debate only.

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

PROGRAM

Mr. INHOFE. Mr. President, tomorrow morning the Senate will resume consideration of S. 1072, the highway bill. There will be no rollcall votes tomorrow, but Senators are encouraged to come to the floor and speak on the merits of the bill. The majority leader will expand on next week's schedule during tomorrow's session.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. INHOFE. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:15 p.m., adjourned until Friday, February 6, 2004, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 5, 2004:

DEPARTMENT OF DEFENSE

MARK FALCOFF, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE CORNELIUS P. O'LEARY, TERM EXPIRED.

FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASS STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH: FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

BRUCE M. QUINN, OF CALIFORNIA

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED: CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

HORACE E. BURTON, OF NEW JERSEY
JAMES P. GOLSEN, OF MARYLAND

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED: CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

ERIC B. WOLFF, OF CALIFORNIA

DEPARTMENT OF STATE

JAMES E. AGUIRRE, OF CALIFORNIA
PHILLIP C. ALLEN, OF VIRGINIA
VINSON A. ANDERSON, OF VIRGINIA
PETER DONALD ANDREOLI III, OF VIRGINIA
MATTHEW KAZUAKI ASADA, OF NEW JERSEY
KIMBERLY ELAINE BAKER, OF VIRGINIA
BENJAMIN STEPHEN BALL, OF CALIFORNIA
JAMES L. BANGERT, OF THE DISTRICT OF COLUMBIA
GEORGE DAVID BANKS, OF VIRGINIA
SUSAN L. BAUER, OF VIRGINIA
JEREMY HEYWOOD BEER, OF COLORADO
WYLITA L. BELL, OF VIRGINIA
KELLY ANNE BILLINGSLEY, OF FLORIDA
ALFRED MICHAEL BOLL, OF FLORIDA
QIANA BRADFORD, OF GEORGIA
MARY KATHERINE BREZIN, OF VIRGINIA
MOZELLA N. BROWN, OF THE DISTRICT OF COLUMBIA
THOMAS M. CALL, OF THE DISTRICT OF COLUMBIA
CHARLES M. CARRICO, OF VIRGINIA
NATHAN CHRISTOPHER CARTER, OF VIRGINIA
DONALD L. CONNER, OF THE DISTRICT OF COLUMBIA
WILFRED A. COTE IV, OF OHIO
AMANDA E. CURTIS, OF TEXAS
JENNIFER LEE DAVIS, OF GEORGIA
ALEXANDER PHILLIP DELOREY, OF FLORIDA
SEAN M. DOHERTY, OF THE DISTRICT OF COLUMBIA
CHRISTOPHER HAYES DORN, OF VIRGINIA
ERIN MARIE DOTSON, OF VIRGINIA
MILES DUDLEY, OF VIRGINIA
ANA M. DUQUE-HIGGINS, OF VIRGINIA
JOANNE EDWARDS, OF CALIFORNIA
YAEL D. EISENSTAT, OF THE DISTRICT OF COLUMBIA
VICTORIA EWSUK, OF VIRGINIA
STEVEN B. FOX, OF THE DISTRICT OF COLUMBIA
LAUREN FUNKHOUSER, OF VIRGINIA
RODRIGO GARZA, OF TEXAS
ANDREA GOODMAN, OF CALIFORNIA
SIMONE LYNNETTE GRAVES, OF FLORIDA
KARYN M. GREEN, OF VIRGINIA
PATRICIA A. HALL, OF VIRGINIA
JOSHUA M. HANDLER, OF THE DISTRICT OF COLUMBIA
WILLIAM FORREST HARLOW, OF TEXAS
JOSHUA MATTHEW HARRIS, OF NEW JERSEY
TIMOTHY B. HEFNER, OF NORTH CAROLINA
GAIL A. HERRMANN, OF MARYLAND
RANDOLPH CHARLES HILLIARD, OF VIRGINIA
THOMAS R. HOBAN, OF VIRGINIA
CATHERINE H. HOLMBERG, OF VIRGINIA
KELLY MAURER HOLTHAUS, OF MARYLAND
JAMES R. JAMERSON, OF MARYLAND
MARA A. KAPLAN, OF VIRGINIA
KAREN YOUNG KESHAP, OF VIRGINIA
DONALD F. KILBURG III, OF MINNESOTA
MARK E. KISSEL, OF MARYLAND
JEREMIAH ANDRE KNIGHT, OF CONNECTICUT
MICHAEL K. KOSTICK, OF VIRGINIA
ANNEMETTE LAVERY, OF ARIZONA
DONNA L. LEE, OF VIRGINIA
JINNIE J. LEE, OF NEW YORK
MICHELLE ANNE LEE, OF OHIO
VAN-TRINH THI LEO, OF VIRGINIA
CAROLYN M. MANN, OF VIRGINIA
TELSIDE LOGAN MANSON, OF VIRGINIA
ROSEMARIE MARTIGNETTI-HAYES, OF MASSACHUSETTS
TANDY KEALA REIKO MATSUDA, OF VIRGINIA
KIMBERLY M. MC CLURE, OF KENTUCKY
DAVID E. MC MULLIN, OF THE DISTRICT OF COLUMBIA
MARC J. MELLINGER, OF VIRGINIA
KURT MICHAEL MIHELICH, OF VIRGINIA
JAMES N. MILLER, OF CONNECTICUT
STUART WAYNE MINOR, OF VIRGINIA
WILLIAM S. MITCHELL, OF VIRGINIA
ANJANA J. MODI, OF PENNSYLVANIA
ARAM MOHAMED, OF VIRGINIA
CHARNAE L. MORRIS, OF NEW YORK
CHINH U. NGUYEN, OF VIRGINIA
KATHARINE B. O'CONNOR, OF VIRGINIA
REBECCA P. OWEN, OF UTAH
TUNISIA M. OWENS, OF CALIFORNIA
MICHAEL L. PAPP, OF VIRGINIA
WILLIAM JOSEPH PATON, OF NEW YORK
ANTHONY C. PATTON, OF VIRGINIA
JESSICA H. PATTERSON, OF VIRGINIA
LISA M. PHILLIPS, OF VIRGINIA
MARGO POGORZELSKI, OF NEW YORK
MUSTAFA MUHAMMAD POPAL, OF VIRGINIA
ANUPAMA PRATTIPATI, OF PENNSYLVANIA
FRANCISCA FLORENCIA QUINTANAR-BERMUDEZ, OF CALIFORNIA
BRIAN J. RAYMOND, OF THE DISTRICT OF COLUMBIA
ANDREW H. READER, OF VIRGINIA
REBECCA ANNE REAM, OF VIRGINIA
CARSON R. RELITZ, OF INDIANA
CHARLES LEWIS RIDLEY IV, OF VIRGINIA
CURTIS RAYMOND RIED, OF CALIFORNIA
DAYNA RACHELLE ROBISON, OF VIRGINIA
SUSAN ELIZABETH SACK, OF VIRGINIA
JOY MICHIKO SAKURAI, OF HAWAII
MARISSA DENISE SCOTT, OF LOUISIANA
CRAIG M. SEHLHORST, OF FLORIDA
JOHN A. SIKO, OF THE DISTRICT OF COLUMBIA
RODNEY A. SNYDER, OF VIRGINIA
EDWARD W. SOLTOW, OF ARIZONA
JAMES REBER SOPP, OF VIRGINIA
PAUL J. STEFANSKI, OF VIRGINIA
DAVID STEPHENSON, OF TEXAS
BRADLEY K. STILWELL, OF WASHINGTON
LAURA TAYLOR-KALE, OF CALIFORNIA
ERIK N. THOMAS, OF VIRGINIA
MATTHEW A. THOMPSON, OF VIRGINIA
ANGELA TLUSTENKO-BROOKS, OF VIRGINIA
KENICHIRO TOKO, OF NEW JERSEY
MICHELLE NICOLE WARD, OF MARYLAND
ALISON E. WERNER, OF THE DISTRICT OF COLUMBIA
COLIN WILLETT, OF VIRGINIA
CARY M. WILLIAMS, OF VIRGINIA
BRIAN CHARLES WINANS, OF ILLINOIS
ANDREW VAUGHN WITHERSPOON, OF NEW HAMPSHIRE
JESSICA A. WOLF, OF NEW YORK
SUSAN W. WONG, OF NEW YORK
CHARLES BYRON WOODWARD JR., OF VIRGINIA
BRYAN DEAN WRIGHT, OF VIRGINIA
RAN XU, OF NEW YORK

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

MICHAEL W. LIIKALA, OF TEXAS

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS VICE COMMANDANT OF THE UNITED STATES COAST GUARD AND TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 47:

To be vice admiral

VICE ADM. TERRY M. CROSS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS COMMANDER, ATLANTIC AREA OF THE UNITED STATES COAST GUARD AND TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 47:

To be vice admiral

REAR ADM. VIVIEN S. CREA, 0000

THE FOLLOWING NAMED CADETS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES COAST GUARD UNDER TITLE 14, U.S.C., SECTION 211:

To be ensign

CATHERINE A. ABELLA, 0000

JOEL A. ABER, 0000
WILLIAM C. ADAMS, 0000
LEAH M. ALBRECHT, 0000
JOHN M. ANDERSON, 0000
RYAN G. ANGELO, 0000
CHRISTOPHER S. ARMSTRONG II, 0000
MORGAN D. ARMSTRONG, 0000
PATRICK N. ARMSTRONG, 0000
STEVE B. ARNWINE, 0000
DANIELLE P. ARTHUR, 0000
PATRICK J. BALL, 0000
ARMELL V. BALMACEDA, 0000
ALEXANDER S. BARKER, 0000
MATTHEW M. BECK, 0000
KRYSTEN M. BENJAMIN, 0000
TIMOTHY J. BERNADT, 0000
TARA M. BERRIOS, 0000
JEANNIE A. BEYER, 0000
CARA J. BLASKO, 0000
JARRETT B. BLEACHER, 0000
TREVOR A. BLOUNT, 0000
JEREMY A. BOHN, 0000
NICOLE D. BONNEY, 0000
TIFFANY A. BRIGHT, 0000
EILEEN BROWN, 0000
TIMOTHY M. BROWN, 0000
ADAM C. BUCKLEY, 0000
LILLIAN R. BUTTERWORTH, 0000
EUSTACIA Y. CALDWELL, 0000
JANE N. CARLEY, 0000
ALEXANDER P. CARRILLO, 0000
ADAM T. CERNOVICH, 0000
ALEXANDRA K. CHERRY, 0000
ELAINE M. CHERRY, 0000
RICHARD M. CHMIELECKI III, 0000
KELLY R. CIMBER, 0000
CHRISTOPHER M. CONDIT, 0000
JAMES O. CONNER, 0000
MATTHEW D. CONNOR, 0000
NEAL A. CORBIN II, 0000
CHRISTOPHER K. CUMBERLAND, 0000
ELVIE A. DAMASO, 0000
LEO T. DANAHER, 0000
DAVID V. DEAL, JR. 0000
JON PAUL M. DEL GAUDIO, 0000
TODD R. DEVRIES, 0000
JESSE M. DIAZ, 0000
DANIEL A. DIIULIO, 0000
ANTONIO DONIS, 0000
MICHAEL J. DOUGHERTY, 0000
NORA K. DOUGHERTY, 0000
JOSHUA M. EATON, 0000
BROCK S. ECKEL, 0000
KRISTOPHER R. ENSLEY, 0000
PATTON J. EPPERSON, 0000
MICHAEL G. FAULKNER, 0000
JOHN A. FILIPOWICZ, 0000
DEREK B. FINE, 0000
SEAN T. FINNEGAN, 0000
JUSTIN M. FORBES, 0000
JENNIFER L. FRYE, 0000
ZACHARY D. FUENTES, 0000
THOMAS M. FULLAM, 0000
GAVIN V. GARCIA, 0000
MICHAEL S. GLINSKI, 0000
ANTHONY F. GOLDSTEIN, 0000
JUSTIN H. GORDON, 0000
ERICA R. GOVEDNIK, 0000
JOSEPH F. GRAHAM, 0000
CHRISTIANE D. GRANT, 0000
OLIVIA K. GRANT, 0000
DOUGLAS D. GRAUL II, 0000
JEREMY M. GREENWOOD, 0000
MICHAEL J. GROCHOWSKI JR., 0000
GLEN R. GROGAN, 0000
JONATHAN I. GRZYB II, 0000
MATTHEW A. GULLY, 0000
PETER K. HAHN, 0000
DEBORAH J. HAMELOTH, 0000
JAMES L. HELLER, 0000
CREIGHTON C. HELMS, 0000
ROBERTO R. HERRERA, 0000
COURTNEY A. HIGGINS, 0000
GREGORY E. HIGGINS, 0000
DAVID W. HOLDEN, 0000
BRANDON C. HORNE, 0000
JOSEPH A. HUNTER, 0000
ROBERT M. HUNTER, 0000
LAUREN U. HURLEY, 0000
CATHERINE B. ICKES, 0000
JEFF G. JANARO, 0000
JEROD P. JAZENSKI, 0000
CHRISTOPHER M. JETT, 0000
MATTHEW J. JEWCZYN, 0000
ERIC P. JOINSON, 0000
JENNIFER M. JOJOLA, 0000
RICHARD M. JONES, 0000
MICHAEL W. KARNOWSKI, 0000
RYAN P. KELLEY, 0000
ANDREW A. KENNEDY, 0000
KALEN M. KENNY, 0000
JEREMY A. KIME, 0000
AARON J. KOWALCZK, 0000
MARK A. KURCZEWSKI, 0000
MICHAEL P. LAMONICA, 0000
HEIDI S. LANDRY, 0000
ANDREW R. LAWRENCE, 0000
MATTHEW D. LAYMAN, 0000
JONATHAN H. LEE, 0000
ADAM G. LEGGETT, 0000
SEAN D. LENAHAN, 0000
JENNIFER E. LEONG, 0000
BRIAN S. LIED, 0000
KIRTLAND L. LINEGAR, 0000
JOHN M. LISKO, 0000
ASHLEY F. LOVEJOY, 0000
MICHAEL P. LUYET, 0000
GREGORY R. LYNCH, 0000
PHILLIP J. MACARTHUR, 0000
JODY J. MAISANO, 0000
THOMAS P. MARTIN, 0000
ROGER M. MASSON, 0000
CHARLES R. MATHIS, 0000
MARC R. MC DONNELL, 0000
MICHAEL S. MC GRAIL, 0000
GREGORY A. MC LAMB, 0000
SCOTT E. MELTON, 0000
AARON C. MEREDITH, 0000
GARRETT R. MEYER, 0000
WENDY E. MEYER, 0000
JAMES E. MILLER, 0000
JAMES R. MILLER JR., 0000
MICHELLE C. MILLER, 0000
MARIETTE C. MILLSON, 0000
JODI J. MIN, 0000
SCOTT C. MITCHELL, 0000
JASON G. MORITZ, 0000
FRANKLIN R. MORRISON III, 0000
KAREN R. MOSS, 0000
ELLEN M. MOTOI, 0000
LISA T. MOTOI, 0000
COLLEEN I. MULLEN, 0000
SEAN M. MURRAY, 0000
JUSTIN P. NADOLNY, 0000
KIDA L. NAMADA, 0000
BRIANNA M. NEASHAM, 0000
CHARLES L. NGUYEN, 0000
KEIDI M. NIEMANN, 0000
KRISTEN A. NIHILL, 0000
MICHAEL A. NINES JR., 0000
MICHAEL J. NORDHAUSEN, 0000
WAYNE T. O'DONNELL JR., 0000
ANDERSON J. OGG, 0000
BENJAMIN R. OLIVER, 0000
JOHN A. OSCAR, 0000
JAMES H. PAFFORD, 0000
STARR E. PARMLEY, 0000
ANDREW L. PASZKIEWICZ, 0000
MICHAEL A. PATTERSON, 0000
JOAN V. PAVLISH, 0000
PIERO A. PECORA, 0000
SEAN M. PETERSON, 0000
ARIEL E. PIEDMONT, 0000
DAVID C. PIZZURRO, 0000
CHRISTIAN T. POLYAK, 0000
KELLY A. PONTS, 0000
JONATHAN H. POTTERTON, 0000
THOMAS E. PRZYBYLA, 0000
NICHOLAS O. RAMIREZ, 0000
MELINDA I. RODRIGUEZ, 0000
JAMIE L. RUSSELL, 0000
JOSEPH W. RUSSO, 0000
LAURA A. SALEMME, 0000
RICHARD W. SANZO, 0000
ASHLY L. SCHILLING, 0000
MAEGAN R. SCHWARTZ, 0000
MARK E. SEAVEY, 0000
BONNIE M. SHANER, 0000
ROBERT J. SHAYE, 0000
DAVID C. SHUCK, 0000
JARED L. SILVERMAN, 0000
STEPHEN M. SIMPSON, 0000
ELISHA F. SIVILS, 0000
JACK B. SMITH, 0000
MATTHEW B. SMITH, 0000
BAXTER B. SMOAK, 0000
DANIEL C. SPORER, 0000
PAUL A. ST. PIERRE II, 0000
KENT A. STEIN, 0000
KRYSTYN E. STENCEL, 0000
CHRISTOPHER W. STEPHENS, 0000
KRYSTAL A. STEVENS, 0000
MICHAEL J. STEWARD, 0000
DEREK G. STOROLIS, 0000
DANIEL B. SWEIGART, 0000
LAURA M. SWIFT, 0000
BRYAN J. SWINTEK, 0000
STANLEY A. TARRANT, 0000
MARIO B. TEIXEIRA, 0000
MAILE I. TESLER, 0000
TIMOTHY S. TILGHMAN, 0000
SEAN M. VALENTINE, 0000
KELLY A. VANDENBERG, 0000
PHILIP C. WADE, 0000
JONATHON R. WAECHTER, 0000
BRIAN L. WARD, 0000
CHRISTOPHER L. WEBER, 0000
STEPHANIE L. WEIDNER, 0000
ANDREW S. WEISS, 0000
KYLE A. WEIST, 0000
JONATHAN I. WELCH, 0000
JENNIFER L. WESCOTT, 0000
JUDSON B. WHEELER, 0000
BRIAN R. WHISLER, 0000
KEITH R. WILKINS, 0000
DESMOND T. WILLIAMS, 0000
BRADLY G. WINANS, 0000

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. HAROLD A. CROSS, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AS CHAPLAINS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

LARRY P. ADAMSTHOMPSON, 0000
DAVID E. BATES, 0000
JAMES S. BOELENS, 0000
PAUL P. BUCK, 0000
STEPHEN L. COOK, 0000
THOMAS L. DAY, 0000
DANNY R. FRANKLIN, 0000
JOHN P. HASH, 0000
RONALD B. HILL, 0000
JERRY L. JONES, 0000
KEITH I. JONES, 0000
DOUGLAS K. KINDER, 0000
GILLEY G. RICHARDSON, 0000
DAVID E. SMITH, 0000
MICHAEL D. TARVIN, 0000
VANCE P. THEODORE, 0000
TIMOTHY N. WILLOUGHBY, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be major

JEREMY A. BALL, 0000
DOUGLAS J. * BECKER, 0000
ROSEANNE M. * BLEAM, 0000
ROBERT A. BORCHERDING, 0000
ROBERT A. * BROADBENT, 0000
STEVEN D. * BRYANT, 0000
MARY E. * CARD, 0000
ERIC R. * CARPENTER, 0000
GEORGE T. * CARTER, 0000
LINDA A. * CHAPMAN, 0000
JONATHAN E. * CHENEY, 0000
CHARLES C. * CHOI, 0000
JOHN H. COOK, 0000
DAVID E. * COOMBS, 0000
TAMI L. * DILLAHUNT, 0000
JAMES H. * DILLON, 0000
RICHARD P. DIMEGLIO, 0000
DANIEL M. FROEHLICH, 0000
DEON M. * GREEN, 0000
JOHN T. * HARRYMAN, 0000
JAMES G. * HARWOOD, 0000
MICHAEL R. HOLLEY, 0000
RUSSELL K. * JACKSON, 0000
MAUREEN A. * KOHN, 0000
ELIZABETH KUBALA, 0000
JONATHAN * LEHNER, 0000
RODNEY R. * LEMAY, 0000
DEAN L. * LYNCH, 0000
ROBERT L. * MANLEY III, 0000
ANDRAS M. * MARTON, 0000
SEAN T. * MCGARRY, 0000
OREN H. * MCKNELLY, 0000
VASCO T. MCRAE, 0000
BRAULIO * MERCADER, 0000
KEVIN J. * MIKOLASHEK, 0000
JEFFREY A. MILLER, 0000
JOSEPH B. * MORSE, 0000
CHARLES C. * ORMSBY JR., 0000
MAANVI M. * PATOIR, 0000
NICOLE E. * RAPONE, 0000
KENNETH J. * RICH, 0000
TRAVIS L. * ROGERS, 0000
BILLY B. RUHLING II, 0000
CARLOS O. * SANTIAGO, 0000
JENNIFER C. * SANTIAGO, 0000
DANIEL P. * SAUMUR, 0000
JOSHUA S. SHUEY, 0000
JAMES J. * TEIXEIRA JR., 0000
JAMES S. * TRIPP, 0000
ECK N. * VAN, 0000
CHRISTIE L. * VAULX, 0000
LISA C. * VIGNA, 0000
MARK A. * VISGER, 0000
SCOTT D. * WALTERS, 0000
MARTIN N. * WHITE, 0000
MICHAEL C. * WONG, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

BALWINDAR K. RAWALAYVANDEVOORT, 0000
TROY A. TYRE, 0000

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S599–S673

Measures Introduced: Two bills were introduced, as follows: S. 2051–2052. **Page S649**

SAFE Transportation Equity Act: Senate continued consideration of S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, taking action on the following amendments proposed thereto: **Pages S614–647**

Pending:

Modified committee amendment in the nature of a substitute.

Dorgan Amendment No. 2267, to exempt certain agricultural producers from certain hazardous materials transportation requirements. **Page S614**

Gregg Amendment No. 2268 (to Amendment No. 2267), to provide that certain public safety officials have the right to collective bargaining. **Page S614**

Withdrawn:

Shelby Amendment No. 2269, (to the language of the bill proposed to be stricken by the committee amendment), to amend chapter 53 of title 49, United States Code, relating to the authorization of Federal funding for public transportation. **Pages S616–42**

A unanimous-consent agreement was reached providing for further consideration of the bill at 9:30 a.m., on Friday, February 6, 2004 for the purposes of debate only. **Page S672**

Nominations Received: Senate received the following nominations:

Mark Falcoff, of California, to be a Member of the National Security Education Board for a term of four years.

1 Air Force nomination in the rank of general.

2 Coast Guard nominations in the rank of admiral.

Routine lists in the Army, Coast Guard, Foreign Service, Marine Corps. **Pages S672–73**

Messages From the House: **Page S648**

Measures Referred: **Page S648**

Executive Communications: **Pages S648–49**

Additional Cosponsors: **Pages S649–50**

Statements on Introduced Bills/Resolutions: **Pages S650–51**

Additional Statements: **Pages S647–48**

Amendments Submitted: **Page S651**

Authority for Committees to Meet: **Page S672**

Privilege of the Floor: **Page S672**

Adjournment: Senate convened at 9 a.m. and adjourned at 6:15 p.m., until 9:30 a.m., on Friday, February 6, 2004. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S672.)

Committee Meetings

(Committees not listed did not meet)

NOMINATIONS

Committee on the Judiciary: Committee concluded a hearing to examine the nominations of William Gerry Myers III, of Idaho, to be United States Circuit Judge for the Ninth Circuit, who was introduced by Senators Craig and Crapo, William S. Duffey, Jr., to be United States District Judge for the Northern District of Georgia, who was introduced by Senators Miller and Chambliss, and Lawrence F. Stengel, to be United States District Judge for the Eastern District of Pennsylvania, who was introduced by Senators Specter and Santorum, after each nominee testified and answered questions in their own behalf.

House of Representatives

Chamber Action

The House was not in session today. It will meet at 12 noon on Friday, February 6, in pro forma session.

Committee Meetings

No committee meetings were held.

COMMITTEE MEETINGS FOR FRIDAY, FEBRUARY 6, 2004

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No committee meetings are scheduled.

Next Meeting of the **SENATE**

9:30 a.m., Friday, February 6

Senate Chamber

Program for Friday: Senate will continue consideration of S. 1072, SAFE Transportation Equity Act.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

12 noon, Friday, February 6

House Chamber

Program for Friday: The House will meet at 12 noon in pro forma session.

Congressional Record

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