

As the 108th Congress comes to a close, it is my sincere hope that the same type of bipartisan spirit can be extended into the 109th Congress. It is vital that Members of this body work together to find common ground on issues that are important to our citizens, our States, our country, and, in some instances, the world.

I, for one, am looking forward to the challenges we face and am confident we can solve the difficult issues for our day and leave a lasting legacy for our children, grandchildren, and future generations.

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

The PRESIDING OFFICER. The clerk will please call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent the order for the quorum call be rescinded.

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

THANKING CHAIRMAN STEVENS

Mr. COLEMAN. Mr. President, I got up here about an hour ago to pay homage, to pay tribute to the senior Senator from Missouri, the chairman of the VA/HUD Appropriations Committee, for his help in finding a way to compensate two young men from Minnesota who have suffered great personal tragedy. I must confess to a rookie mistake in not recognizing at the same time a person without whose help, approval, and guidance this never would have happened, and that, of course, is the chairman of the Appropriations Committee, Senator STEVENS from Alaska. I know he was personally involved in this. In fact, he commented to me this is one of the worst, most terrible circumstances, and we need to address it. He has pledged on a longer term basis, even next year, to look at other situations like this so that we do the right thing.

I want to say on the record to my friend, the chairman of the Appropriations Committee, how appreciative I am, how thankful I am, how grateful I am for all he does, for his guidance in putting together a huge package that deals with big things but doesn't forget little things. Sometimes the little things are big things. In this case, this somewhat little thing—little in the scope of a \$388 billion bill, but big for two young men who have suffered so much—would not have happened without the help and the direction of the chairman of the Appropriations Committee. I wanted to make that clear on the record my deep appreciation for his big heart, for his guidance and mentorship, his concern, and ultimately his ability to get things done.

I yield the floor and 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. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

CONTINUING SAGA OF BOSTON'S BIG DIG

Mr. MCCAIN. Mr. President, I come to the floor to discuss the continuing saga of Boston's big dig, an issue I have been involved in now for many years. As usual, the news is not good.

As most of my colleagues know, the Central Artery/Ted Williams Tunnel Project in Boston, more commonly known as the big dig, apparently has sprung a leak or, more accurately, hundreds of leaks.

The two independent engineers brought in by the Massachusetts Turnpike Authority are still assessing the extent of the problem. But so far, over 400 leaks have been identified that they say could take a decade—and millions of dollars—to fix. And on Wednesday, the Boston Globe reported that documents obtained by the newspaper indicate there are "thousands of ceiling and wall fissures, water damage to steel supports and fireproofing systems, and overloaded drainage equipment".

It comes as no surprise that all of the parties involved in this latest scandal are holding each other, but not themselves, accountable. Modern Continental Construction Company, which performed the work where the 8-inch "blow out" leak occurred in the north-bound section of the I-93 tunnel in September, believes the project's engineer, and joint venture of Bechtel Corporation and Parsons Brinckerhoff, is responsible because of faulty design work. The Turnpike Authority insists that even though a senior agency official was notified of the leak problem in 2001, the contractors and the project engineer are the responsible parties. The Governor believes that Turnpike Authority bears responsibility and has asked for Chairman Amorello's resignation. With all the finger-pointing, I am concerned that the taxpayers could end up footing at least part of the bill for repairs.

I do not intend to allow this to happen. The newly-discovered leaks are just another in a long list of costly failures in the continuing saga of the big dig.

The Central Artery Tunnel Project was conceived in 1981 and received initial approval in 1985. Construction began in 1991 with a target completion date of December 1998. I repeat, the target completion date of the Central Artery Tunnel Project, known as the big dig, was December 1998. As I calculate, it is now 6 years later. Over the intervening years, the completion date slipped nearly 7 years. The current forecast is for the project to be completed between May and November of 2005.

As delays for the project mounted over the years, the costs of the project spiraled out of control. According to this chart, it was estimated in 1985 that the big dig would cost \$2.6 billion. When the project is finally completed next year, the total cost is projected to be \$14.6 billion, roughly 5.5 times the original estimate. That does not count the newly discovered leaks and the repairs which, in the view of some, would take 10 years to fix.

We now know that billions of the cost overruns are attributable to mistakes and deliberate misstatements by the project managers. We have had over 20 reports from the Department of Transportation Inspector General which has tracked this very carefully. There have been deliberate misstatements by the project managers, made not only to the people of Massachusetts but also to the Congress of the United States. Several years of low-ball cost estimates finally caught up with the big dig in the year 2000.

In January of that year, the Turnpike Authority submitted its annual financial plan, estimating the cost of the big dig at \$10.8 billion.

The following month, on the same day the Federal Railroad Administration accepted the plan as valid, the Turnpike Authority announced the project would cost \$12.2 billion, or an estimated additional \$1.4 billion.

Bechtel/Parsons Brinckerhoff blamed the increase on unforeseen cost increases and shortening the construction schedule by 2 years. But a series of articles by the Boston Globe concluded that the majority of the \$1.4 billion cost overrun was due to design errors by Bechtel/Parsons Brinckerhoff. In one instance, the engineering firms failed to include the FleetCenter, the sports center home to the Boston Bruins and Boston Celtics, in the designs for the project. Months of construction took place before the design flaw was detected. This mistake alone cost taxpayers \$991,000.

The Department of Transportation Inspector General and all members of the Commerce Committee are aware of the incredible work the Department of Transportation Inspector General has done, which issued 20 reports on the big dig, and was highly skeptical of the project managers' cost projections, and concluded in May 2000 that the project's managers were "well aware that costs were increasing significantly" and "deliberately withheld" information about cost increases in the 1998 and 1999 financial plans.

That statement by the Department of Transportation Inspector General bears repeating. It concludes that the project's managers were well aware that costs were increasing significantly and deliberately withheld information—that includes the Congress of the United States—about cost increases in the 1998 and 1999 financial plans.

Last year, the Securities and Exchange Commission determined the Turnpike Authority and its former

chairman, James Kerasiotes, had violated the securities laws by failing to disclose to investors during the 1999 bond offerings that they knew of the more than \$1 billion in cost overruns related to the project. The Securities and Exchange Commission order noted:

Reasonable investors would have considered project cost increases in excess of \$1 billion to be an important factor in the investment decisionmaking process . . . In addition to being a substantial amount in absolute terms, the cost increases equal to approximately 3% of the total revenues of the Commonwealth estimated for fiscal year 2000 and 2001 . . . and 9% of the total Commonwealth debt load as of January 1, 1991, and exceeded the amount of the Commonwealth's rainy day fund.

After the revelations in 2000 about the rising cost of the project, I sought and achieved an overall Federal cap for the big dig of \$8.549 billion in fiscal year 2001 transportation appropriations legislation. The cap was also incorporated in a project partnership agreement entered into June 22, 2000, by the Federal Railroad Administration and the Commonwealth to improve management and oversight of the big dig.

As a result of the cap, the Federal taxpayers should be protected from additional project costs. Without the cap, the Federal share of the big dig could have been as much as \$12 to \$13 billion.

Efforts are underway to recover project costs associated with change orders, led by retired probate judge Edward M. Ginsburg at the Turnpike Authority. The cost recovery team, as of March 2004, identified 634 potential cost recovery items valued at over \$744 million, but today the team has only recovered \$3.5 million from one design consultant and none has been refunded from Bechtel/Parsons Brinckerhoff, although the Turnpike Authority and the Commonwealth have filed suit against the joint venture, seeking \$146 million in damages. Eventually, perhaps, the taxpayers will recoup some modest portion of the costly mistakes.

Since Federal oversight of the big dig by the Department of Transportation Inspector General and the Federal Railroad Administration was strengthened in 2000, the big dig has submitted realistic financial plans and construction has preceded relatively on schedule. Even as portions of the project were being completed, taxpayer dollars were being improperly spent. In 2002, the Turnpike Authority spent \$373,000 to host walking tours of the bridge and the I-93 tunnel. Later that year, the Turnpike Authority threw a \$1 million party to celebrate the opening of the Leonard P. Zaim Bunker Hill Bridge. Nearly half the expenses, \$450,000, were paid for with public funds.

In December 2003, Chairman Amorello's plans to celebrate the opening of the southbound I-93 tunnel with a concert by the Boston Pops for 2,000 invited guests caused an uproar. While the \$250,000 cost of the concert could have been donated by Citizens Bank, Chairman Amorello reportedly planned to use up to \$200,000 in public funds for

security and site preparation. Ultimately, the event was cancelled, but only after Citizens Bank, a major sponsor of the event, complained about diverting highway beautification funds to help pay for the event.

It is also the matter of the big dig's headquarters building. In 1992, they purchased their headquarters building for \$29 million, \$26 million of which was financed with Federal highway funds. The Commonwealth now plans to sell the building and expects to see \$97 million net of transaction costs. The Federal Railroad Administration has concluded that Massachusetts may treat the proceeds from the sale as State funds, even though the Federal Government funded 90 percent of the purchase. And the Government Accountability Office has concluded that the Federal share of the proceeds from the sale of the headquarters building does not count against the statutory Federal cap.

I remain firmly committed to protecting Federal taxpayers from incurring any additional expenditure for the big dig, including costs associated with the sale of property, fixing hundreds of leaks in the tunnels, or celebrating the completion of a project not well done.

Mr. President, I ask unanimous consent that articles from the Boston Globe and the Boston Herald be printed in the RECORD.

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

[From The Boston Herald, Nov. 14, 2004]

WITH TUNNEL ALL WET, BUILDER DRAINS STATE

(By Casey Ross)

A confidential agreement that paid the Big Dig's lead contractor for additional work on a defective section of the Interstate 93 tunnel also included a hefty cash advance and money for the leaky Fort Point Channel tunnel, according to court documents and a former state official.

The agreement, a \$59 million payout authorized by top Massachusetts Turnpike Authority officials in 2002, paid Modern Continental without demanding compensation for its faulty work, the court papers say.

"The Authority cannot protect (Modern Continental) from itself or place the interests of . . . the commonwealth and its taxpayers," former Turnpike board member Christy Mihos said in a 2002 letter to Chairman Matthew Amorello.

The payout is significant because top Turnpike Authority officials knew of Modern's faulty work—both in the Fort Point Channel and the Interstate 93 tunnel—and did nothing to hold the contractor accountable, former officials say.

The payout also could jeopardize the state's efforts to recover costs for repairs to hundreds of leaks in the tunnels—an assertion Turnpike Authority officials deny because of contract language they say gives them broad collection powers.

In court papers responding to a lawsuit filed by Mihos—the suit alleges Amorello and a Turnpike lawyer refused to give him access to records—Turnpike officials say the \$59 million agreement was necessary to allow financially troubled Modern Continental to finish its work.

Lawyers for the Turnpike also say Mihos was twice given an opportunity to review the agreement.

Money that was paid for the Fort Point Channel tunnel, which sprung a massive leak in September 2001, capped the amount spent on that contract at \$417 million, a 39 percent increase over its original price.

Before reaching that agreement, Pike officials launched a complaint investigated by the Attorney General's office that Modern Continental had filed false monetary claims for tunnel work.

But Mihos said top Turnpike Authority officials, by authorizing a payout in 2002 that paid for work not yet performed, did little to hold the contractor accountable.

"We do not work for (Modern Continental), they work for us," Mihos wrote to Amorello. ". . . We cannot and must not place the (Big Dig) or its funds in jeopardy."

[From The Boston Globe, Sept. 16, 2004]

ARTERY TUNNEL SPRINGS LEAK, TRAFFIC SNARLED; BIG DIG CLOSES LANES, SEEKS CAUSE, AIMS FOR FULL REOPENING

(By David Abel and Mac Daniel)

Water gushed into the Central Artery's northbound tunnel for hours yesterday from a small breach in the eastern wall, backing up afternoon rush-hour traffic for miles and leaving Big Dig officials at a loss to explain where the water was coming from and what had caused the leak.

In the first couple of hours after the leak was reported, about 1:45 p.m., officials closed two lanes in the northbound tunnel and all onramps from the Massachusetts Turnpike. Traffic on the Southeast Expressway backed up to Quincy, and there were long delays on the turnpike approaching the interchange.

Big Dig officials said at a late afternoon press conference that they hoped to reopen all the tunnel's northbound lanes by this morning's commute. But they said they did not know how long it would take to find the source of the leak and repair the damage, and they could not guarantee that work would be finished in time.

By late afternoon, officials could not provide an estimate of how much water had flowed into the tunnel. For safety and to soak up the water, highway workers piled sandbags along the eastern wall and poured sand in the right lane.

Officials and engineers were so uncertain about the origin of the water that some tasted it. The likely source, they said, was groundwater, because that portion of the tunnel sits 110 feet underground.

One theory for the leak was that sand or clay got into the poured concrete in the tunnel's slurry wall during construction, said Sean O'Neill, a spokesman for the Massachusetts Turnpike Authority, which oversees the \$14.6 billion Big Dig project.

O'Neill said it is possible that groundwater ate away at the sand and carved a small leak in the wall.

During construction of the Big Dig, engineers and workers built the slurry walls by first digging a series of deep trenches, which were filled with a clay substance. Concrete was then pumped underneath, displacing the clay and forming the tunnel's concrete walls.

Keith Sibley, director of construction for Bechtel/Parsons Brinckerhoff, the consortium responsible for major portions of the Big Dig, sought during the press conference to reassure drivers and state officials that there were no safety concerns.

"Structurally, there's no problem with the tunnel at all," he said.

But state officials said they would hold the consortium responsible for all costs of sealing the leak and repairing the wall.

"Believe me, as a customer of the product we constructed, I'm not happy right now," said Matthew J. Amorello, chairman of the

Massachusetts Turnpike Authority, which oversees the \$14.6 billion Big Dig project. "It's unacceptable, and we're going to deal with it."

Bechtel/Parsons officials said last night that Modern Continental, the contractor that built the tunnel's slurry walls 10 years ago, would pay for the repairs.

"Modern Continental has accepted responsibility and will make all the repairs as quickly as possible," said Andrew Paven, a Bechtel/Parsons spokesman.

But last night, a spokeswoman for Modern Continental said that no such agreement had been reached. "The cause of the leak has not been determined, and no conversation about the cost of the repairs has taken place," said the spokeswoman, Lorraine Marino.

About 7 last night, Big Dig engineers met in an office at the project's headquarters on Kneeland Street to figure out how to plug the hole without making the problem worse. The engineers said that removing tiles along the wall could expand the leak.

Officials were notified about the leak when motorists began reporting water seeping through Jersey barriers along the northbound tunnel's eastern wall.

Shortly after those reports, with the water flow at its heaviest, officials closed two lanes of the northbound tunnel, which produced the miles-long backup.

To ease congestion, officials opened the Haul Road off Interstate 93 north at 3:30 p.m., a road normally limited to commercial traffic. At the same time, they closed the entrance into the tunnel from Congress Street. And 15 minutes later, officials closed all onramps from the turnpike leading to northbound tunnel.

By early evening, the closing was reduced to one lane, and traffic was flowing. So was the water, which continued to form a small pool in the right lane of the tunnel about a quarter mile south of Exit 23 to Government Center.

A stream of water trickled between sandbags and rippled in a puddle about 5 inches deep and two cars long in the right lane.

Officials said they found an 8-inch hole in the slurry wall, one of the Big Dig's signature innovations, and sent a special team of construction workers to inspect whether the damage was more extensive.

Officials said there was no connection between yesterday's leak and a water leak last winter, when ice formed on the road surface in the northbound and southbound tunnels. The ice was blamed on the presence of old steel footings from the elevated Central Artery, which allowed rainwater to seep into the tunnel.

While construction of the Big Dig is nearing an end, the process for determining who should pay for the cost overruns in the project is ongoing.

In February 2003, Amorello appointed Edward M. Ginsburg, a retired state judge, to lead a review of the project with an eye to holding contractors responsible for mistakes. To date, Ginsburg's team of lawyers and engineers has identified more than 700 construction issues and has recovered \$3.5 million from a design firm.

The Ginsburg team has filed several lawsuits against other design firms, including one seeking \$150 million from Bechtel/Parsons Brinckerhoff, the project's overall manager.

Last night, Ginsburg said he could not comment on the leak, but promised an aggressive investigation on behalf of taxpayers.

"We will definitely get all the preliminary reports and send our people in to look at this," he said. "This shouldn't happen, and somebody has got to make an explanation, and I can assure you it is not going to get by us. We will look at this, absolutely."

[From the Boston Globe, Nov. 17, 2004]

LIST OF TUNNEL TROUBLES GROWS LONGER, MORE LEAKS, DAMAGE FOUND

(By Raphael Lewis and Sean P. Murphy)

The Big Dig's tunnel leak problem is far more costly and extensive than Massachusetts Turnpike officials and private contractors have acknowledged, involving thousands of ceiling and wall fissures, water damage to steel supports and fireproofing systems, and overloaded drainage equipment, according to documents obtained by the Globe.

Turnpike officials and private-sector managers Bechtel/Parsons Brinckerhoff have together signed off on at least \$10 million in cost overruns to repair the leaks and water damage since early 2001, the records show, and the problem persists.

Turnpike officials did not acknowledge the leak problem until it was revealed in the Globe last week.

All this occurred while engineers worked frantically to come up with a permanent solution for waterproofing the tunnels, an effort that continues today, according to project documents.

The problem stems in part from an apparent projectwide failure in the original design of the waterproofing system, a critical feature of a tunnel that sits almost entirely beneath the salty water table of downtown Boston. In a confidential report commissioned by the Turnpike in 2001 by the auditing firm Deloitte & Touche, project officials acknowledged that "the original design provided insufficient protection against leaking" at the top of tunnel walls.

With construction of the tunnels well underway and with water seeping in through joints between the roof and tunnel walls and between panels, Bechtel/Parsons Brinckerhoff abandoned its initial waterproofing system, a membrane applied to the roof and walls that had proved incapable of stopping water. Contractors were ordered to apply a spray-on application instead.

Doug Hanchett spokesman for the Massachusetts Turnpike Authority, which oversees the Big Dig said that the agency has made progress in controlling the leak problem and that the authority is working to recoup costs from contractors.

"This issue is something that will resolve itself through the construction process, and we fully expect that the contractors will perform the waterproofing work, as required in their contracts," Hanchett said.

Earlier this month, a team of independent engineers hired to investigate a massive leak that erupted in September said the project was riddled with more than 400 leaks throughout the tunnel system.

However, the documents obtained by the Globe show nearly 700 leaks in just one 1,000-foot section of the Interstate 93 tunnels beneath South Station. The documents include memorandums, diagrams, photographs, and correspondence pertaining to the Central Artery tunnels.

According to documents detailing modification to tunnel finishing contracts, which were obtained by the Globe, the Turnpike Authority and Bechtel/Parsons Brinckerhoff established a Leak Task Force in early 2001 and is now allocating \$250,000 a month for the firm McCourt/Obiyashi to send repair teams into virtually all sections of the I-93 tunnels. McCourt/Obiyashi's initial contract, which began in 1999, had no such provisions for leak repair, but by mid-2001 the firm was extensively engaged in that effort, the documents show.

For example, in August 2003, tunnel officials approved a \$205,000 plan to replace 300 wall panel connectors in the downtown tunnels because "excessive tunnel leakage with high salt content has caused unacceptable corrosion."

In another instance in March 2001, McCourt/Obiyashi was told to extend tubes that contained liquid concrete grout for leak repairs throughout the tunnels. That work cost \$300,000.

George J. Tamaro, an independent engineer hired by the Turnpike Authority to investigate the source of the massive tunnel leak that erupted in September, said that the roof's waterproofing membrane didn't work as intended and that engineers have used concrete grout for several years to try to plug the leaks. He said problems with leaks seemed to occur when the weather becomes colder.

Tamaro and another engineer hired to investigate the situation, Jack K. Lemley, said a permanent solution to address the problem is needed, or workers will spend years, perhaps even a decade, patching and repatching the leaks.

Anthony Lancellotti, a Bechtel/Parsons Brinckerhoff design executive, said that "there are a lot of theories" on the cause of the leaks and that he is not allowed to discuss them because of ongoing investigations by Bechtel/Parsons Brinckerhoff, the Turnpike Authority, the state attorney general's office, and the US Department of Transportation's inspector general.

But Lancellotti insisted that there has been a dramatic drop in the number of leaks due to ongoing repairs. He said that using grout to close leaks is a hit-or-miss proposition. Workers drilling into the concrete to inject the grout are never sure the holes they have drilled intersect with the path of the leak.

"Drilling is exploratory," he said. "You have to do it several times. You chase leaks; that's the nature of the business. But we have seen a dramatic improvement."

Attorney General Thomas F. Reilly, who said his office is meeting regularly with engineers trying to get refunds for shoddy work, predicted that the cost of fixing the roof leaks will be much more than the \$10 million already spent by the Turnpike Authority, and he called on the contractors involved, including Bechtel/Parsons Brinckerhoff, to cover those costs.

In addition to the \$10 million allocated so far, project construction contractors who built the tunnels have on their own spent at least \$6 million plugging leaks, according to construction industry officials who spoke on condition of anonymity.

Some of the contractors are now pressing hard to be compensated by the state for those expenses.

One firm, Modern Continental, has submitted a bill of roughly \$4 million for leak repair work, and is asserting that the leakage problem is the result of a flawed design by Bechtel/Parsons Brinckerhoff.

But the Turnpike Authority and Bechtel/Parsons Brinckerhoff have insisted that the design was appropriate.

[From the Boston Herald, Sept. 17, 2004]

SPONGEBOB TUNNEL SIMPLY LEAVING TAXPAYERS ALL WET

(By Howie Carr)

They're going to make a movie about the Big Dig.

They'll call it "The Poseidon Adventure." Or maybe "15 Billion Dollars Under the Sea." Or "Voyage to the Bottom of the Tunnel."

Another day, another flood. And Wednesday was a dry day, too, as you well recall, if you were caught in the traffic jam for two or three hours. It hadn't rained in a week, but suddenly there was a flood. It was a small gusher, a Newton Lower Falls type of cascade. But you have to wonder, how long until we get a Niagara down there in the Liberty Tunnel?

In case you've forgotten, the Big Dig cost \$14.6 billion.

And it leaks. It has more holes in it than a "60 Minutes" investigation.

Riding into the tunnel is like going through a car wash, only you can't get a wax job. The next time they have a grand opening ribbon-cutting down there, they should forget the elephants and invite SpongeBob SquarePants instead.

How many more times do we have to endure Fat Matt Amorello, the bloated hack who runs the Big Dig, at a press conference, flopping like a fish, as SpongeBob would say? Talk about nautical nonsense.

To quote Fat Matt: "I'm not a happy customer."

"I didn't know he was a customer," said Christy Mihos, the former Pike board member. "I thought he was the boss."

Only when there's a ribbon to be cut.

"The Big Dig," Amorello says in one of the Pike's many four-color handouts, "has evolved into the single largest, most complex highway project on the planet."

And it leaks.

Yesterday, Fat Matt was talking about a "forensic" investigation. What a joke. After years of cost overruns and water overflows, Fat Matt has got about as much credibility as Dan Rather talking about his "unimpeachable sources."

Why won't Gov. Mitt Romney fire Fat Matt? That's been the question for a long time now. Of course, Mitt needs "just cause"—that was the ruling of the SJC in the firings of Christy Mihos and Jordan Levy by then-Gov. Jane Swift. But how much more ineptitude can Mitt tolerate? This guy Fat Matt is a walking blister.

But after this latest flood, it appears that there may be some method to Mitt's madness. These leaks, after all, are just going to keep coming, no matter what they say. So Mitt needs a . . . hostage, someone he can whack when the time comes. Remember Jim Kerassotes?

If—when?—the day comes that you need Noah's Ark to get around down there, someone's going to have to take two in the hat. And Mitt can say, hey, I tried to blow out this bindlestiff, but the Legislature refused to pass my highway reorganization plan.

Mitt's good at this kind of in-fighting. Look at the convention in July. He washed his hands of that fiasco pretty well. He offered the DNC the use of the convention center in South Boston, and then when the city shut down for a week, Mitt said, that's too bad, I wish they'd taken me up on my offer.

Now Mitt wants to run for president, and the last thing he needs to do is preside over a flooded-out, \$15 billion tunnel. Better Trav should take the hit.

Of course, whenever Fat Matt's minions talk about this fiasco, they mention how much money they've gotten back from the contractors. So far, on a \$14.6 billion project, they've recovered \$3.5 million.

That would be like if you hired a guy to fix the roof on your house for \$10,000, and the first time it rained, the water was coming into every nook and cranny in your home. And then the contractor told you, hey, that's a shame, so I'm going to give you a refund—here's \$30.

Why don't we just rename the tunnel after SpongeBob SquarePants? Absorbent and yellow and porous is he—just like the tunnel.

[From the Associated Press State & Local Wire, Nov. 10, 2004]

BIG DIG OFFICIALS: TAXPAYERS WON'T PAY TO REPAIR LEAKS

By Steve Leblanc

BOSTON—The Big Dig is riddled with leaks that are dumping millions of gallons of

water into the \$14.6 billion tunnel system, according to an engineer hired to investigate the cause of a massive leak in September.

Locating and fixing the hundreds of leaks could take up to 10 years, said Jack K. Lemley, a consultant hired by the Massachusetts Turnpike Authority to investigate the problem.

"There is no public safety issue," Turnpike Authority Chairman Matthew Amorello said Wednesday, adding that the tunnels remain structurally sound, and the drainage system is keeping water off the roadways.

Lemley told The Boston Globe that repairing September's leak alone would require two months and lane closures. But Amorello said that taxpayers and motorists who pay tolls will not foot the bill for repairs.

Lemley's team also found documents showing that managers of Bechtel/Parsons Brinckerhoff, the private consortium that managed the project, were aware that the wall breached this fall was faulty when it was built in the late 1990s, but did not order it replaced and did not notify state officials.

Retired judge Edward M. Ginsburg, leader of a state-appointed team reviewing overcharges by Big Dig contractors, said he has spoken to Attorney General Tom Reilly about filing a lawsuit targeting Bechtel and Modern Continental, the contractor that built the wall section that leaked in September.

"I can honestly say we were shocked," Ginsburg told the Globe. "I can assure you we're going to make sure there is a thorough investigation."

Turnpike Authority member Jordan Levy promised to make the contractors pay for repairing the leaks. mat.

"I'm outraged and dismayed at the quality of some of this work," he said. "We are not going to let anyone off the mat."

"If there was a cover-up involved in this, I would expect the attorney general would bring this before a grand jury to determine if there is criminal intent here," he said.

Levy said either the Bechtel project was incompetent or there was "malfeasance at the highest level."

"I don't think they're stupid," he said.

Levy said the scope of the problem was "beyond comprehension," given the years and billions of tax dollars spent.

He added that more tax dollars would be spent to fix the problem, "over my dead body."

In September, an eight-inch leak sprung in the northbound lanes of the Interstate 93 tunnel and caused 10-mile backups on the highway.

Bechtel/Parsons Brinckerhoff issued a statement Tuesday saying:

"While the cause of the September water leak in the northbound tunnel remains under investigation, it would be inappropriate for us to comment on specific allegations. . . . In a tunnel of this construction type, seepage is inevitable, but is mitigated by proper engineering and maintenance programs, which have been planned for and are in place. The tunnel is structurally sound."

Modern Continental, the largest contractor on the project, also issued a statement.

"The results of the investigation will conclude that Modern's workmanship was in accordance with contract plans and specifications," it said.

Ginsburg said his team will demand that the contractors fix the problem at no cost to taxpayers. He could not estimate the cost.

The September leak was the latest in a series of embarrassing episodes in the two-decade construction of the Big

Dig, formally called the Central Artery/Third Harbor Tunnel project.

In January, ice formed in the tunnels, forcing officials to close lanes and jamming up

traffic. And in 2001, a leak spouted from under one of six concrete tubes being put in place to carry Interstate 90 through the Fort Point Channel.

The Big Dig replaced the elevated Central Artery of Interstate 93 with underground tunnels through downtown

Boston. It also connected Interstate 90—the Massachusetts Turnpike—to Logan International Airport, and added the Ted Williams Tunnel beneath Boston Harbor.

Mr. MCCAIN. Mr. President, on November 17, there was an article in the Boston Globe: "List Of Tunnel Troubles Grows Longer, More Leaks, Damage Found." I will quote parts of the article:

The problem stems in part from an apparent projectwide failure in the original design of the waterproofing system. . . .

Earlier this month, a team of independent engineers hired to investigate a massive leak that erupted in September said the project was riddled with more than 400 leaks throughout the tunnel system.

However, the documents obtained by the Globe show nearly 700 leaks in just one 1,000-foot section of the Interstate 93 tunnels beneath South Station. . . .

In addition to the \$10 million allocated so far, project construction contractors who built the tunnels have on their own spent at least \$6 million plugging leaks, according to construction industry officials who spoke on condition of anonymity.

Some of the contractors are now pressing hard to be compensated by the state for those expenses.

One firm, Modern Continental, has submitted a bill of roughly \$4 million for leak repair work, and is asserting that the leakage problem is the result of a flawed design by Bechtel/Parsons Brinckerhoff. . . .

George J. Tamaro, an independent engineer hired by the Turnpike Authority to investigate the source of the massive tunnel leak that erupted in September, said that the roof's waterproofing membrane didn't work as intended and the engineers have used concrete grout for several years to try to plug the leaks. . . .

Tamaro and another engineer hired to investigate the situation, Jack K. Lemley, said a permanent solution to address the problem is needed, or workers will spend years, perhaps even a decade, patching and repatching the leaks.

An article in the Associated Press:

The team of consulting engineers also said it found documents showing that managers of Bechtel/Parsons Brinckerhoff, the private consortium that oversaw the project, were aware that the wall was faulty when it was built in the late 1990s but did not tell the Turnpike Authority about it.

Another article in the Associated Press:

Locating and fixing the hundreds of leaks could take up to 10 years, said Jack K. Lemley, a consultant hired by the Massachusetts Turnpike Authority. . . .

Lemley's team also found documents showing that managers of Bechtel/Parsons Brinckerhoff, the private consortium that managed the project, were aware that the wall breached this fall was faulty when it was built in the late 1990s, but did not order it replaced and did not notify state officials.

Retired Judge Edward M. Ginsburg, leader of a state-appointed team reviewing overcharges by Big Dig contractors, said he has spoken to Attorney General Tom Reilly about filing a lawsuit targeting Bechtel and Modern Continental, the contractor that built the wall section that leaked in September.

"I can honestly say we were shocked," Ginsburg told the Globe. "I can assure you we're going to make sure there is a thorough investigation."

Here is one in the Boston Herald:

They're going to make a movie about the Big Dig.

They'll call it "The Poseidon Adventure." Or maybe "15 Billion Dollars Under the Sea." Or "Voyage to the Bottom of the Tunnel."

Another day, another flood. And Wednesday was a dry day, too, as you well recall, if you were caught in the traffic jam for two or three hours. It hadn't rained in a week, but suddenly there was a flood. It was a small gusher, a Newton Lower Falls type of cascade. But you have to wonder, how long until we get a Niagara down there in the Liberty Tunnel?

... In case you've forgotten, the Big Dig cost \$14.6 billion.

And it leaks. It has more holes in it than a "60 Minutes" investigation.

Riding into the tunnel is like going through a car wash, only you can't get a wax job. The next time they have a grand opening ribbon-cutting down there, they should forget the elephants and invite SpongeBob SquarePants instead.

How many more times do we have to endure Fat Matt Amarillo, the bloated hack who runs the Big Dig, at a press conference, flopping like a fish, as SpongeBob would say? Talk about nautical nonsense.

To quote Fat Matt: "I'm not a happy customer."

"I didn't know he was a customer," said Christy Mihos, the former Pike board member. "I thought he was the boss."

Only when there's a ribbon to be cut.

I commend this article to all of my colleagues' reading. It is very entertaining. And since it is such a sad kind of a situation, maybe there is room—

Why don't we just rename the tunnel after SpongeBob SquarePants? Absorbent and yellow and porous is he—just like the tunnel.

I think that is pretty much of a high point or low point of my selective reading from articles from the Boston Globe and the Boston Herald and the Associated Press.

Mr. President, in summary, this is a serious situation. I do not believe the taxpayers of America should pay any more money in this effort. No funds have been recovered from Bechtel/Parsons Brinckerhoff, although the Turnpike Authority and the Commonwealth have filed suit against the joint venture.

I hope we can get this cleared up as soon as possible. I would assume next year the Commerce Committee will have additional oversight hearings on this issue. This is not a good day for the taxpayers of America.

FAMILY ENTERTAINMENT AND COPYRIGHT ACT OF 2004

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3021, which was introduced earlier today by Senators HATCH and LEAHY.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3021) to provide for the protection of intellectual property rights and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the McCain amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

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

The amendment (No. 4074) was agreed to.

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

The bill (S. 3021), as amended, was read the third time and passed, as follows:

S. 3021

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Entertainment and Copyright Act of 2004".

TITLE I—ARTISTS' RIGHTS AND THEFT PREVENTION

SEC. 101. SHORT TITLE.

This title may be cited as the "Artists' Rights and Theft Prevention Act of 2004" or the "ART Act".

SEC. 102. CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section:

"§2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility

"(a) OFFENSE.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

"(1) be imprisoned for not more than 3 years, fined under this title, or both; or

"(2) if the offense is a second or subsequent offense, be imprisoned for not more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

"(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

"(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized in-

vestigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting under a contract with the United States, a State, or a political subdivision of a State.

"(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a facility where a motion picture is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture being exhibited, or the agent or employee of such licensor—

"(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section for the purpose of questioning or summoning a law enforcement officer; and

"(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

"(e) VICTIM IMPACT STATEMENT.—

"(1) IN GENERAL.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

"(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

"(A) producers and sellers of legitimate works affected by conduct involved in the offense;

"(B) holders of intellectual property rights in the works described in subparagraph (A); and

"(C) the legal representatives of such producers, sellers, and holders.

"(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

"(g) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) TITLE 17 DEFINITIONS.—The terms 'audiovisual work', 'copy', 'copyright owner', 'motion picture', 'motion picture exhibition facility', and 'transmit' have, respectively, the meanings given those terms in section 101 of title 17.

"(2) AUDIOVISUAL RECORDING DEVICE.—The term 'audiovisual recording device' means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2319A the following:

"2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility."

(c) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of "Motion pictures" the following:

"The term 'motion picture exhibition facility' means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances."