Robert Tobias, president of the employees union, said he would not apologize for the blunt talk in the memos.

''This was me doing my job as president to inform [members] what the stakes are,'' said Tobias. ''There's nothing wrong with telling people that if you don't get off your duff you're in danger of losing your job. Brass Ring is a wake-up call to all of us involved in fighting drugs.''

On Tuesday, Banks said he was pleased that the president's proposed customs operating budget for 1999, publicly announced Tuesday, was $1.8 billion, up from $1.7 billion in 1998. That budget must still be approved by Congress.

Banks said he was willing to publicly admit some of the agency's enforcement problems ''so we can get the issue out there, even if it's critical to us.''

''I'm willing to take it on the chin if necessary to get the message out, so we can focus on the drug problem,'' said Banks. ''I want to get the message out to the American public so they can deal with it in the community and in schools.''

Banks said Brass Ring will ''dramatically increase drug seizures'' at the 24 points of entry on the U.S.-Mexico border.

''The push for Brass Ring is to turn up the heat internally and get people focused. We're trying to get people focused. We're trying to put the heat on ourselves,'' Banks said.

A Nov. 28, 1997, report by the union said that ''intelligence sources are reporting that 5 to 7 tons of illegal drugs are being smuggled from Mexico to the U.S. every day.''

In the interview Tuesday, Banks said he does not dispute the union's figures.

Concern over the declining cocaine interdiction figures arose in September, when Banks reported in a memo to customs employees that he had met with Gen. Barry McCaffrey, head of the Office of National Drug Control Policy. The Sept. 18, 1997, memo said that ''we were asked some tough questions about the effectiveness of our various operations, and we did not always have convincing answers.''

Heffelsinger said the biggest problem in customs' interdiction plan had been its predictability.

In 1997, 3.5 million trucks and rail cars crossed into the United States from Mexico at the commercial ports along the border from Texas to California and about 30% were inspected for narcotics, customs officials said. An equal number of trucks and rail cars crossed in 1996, and 25% were inspected for drugs that year, they added.

However, ''we aren't as unpredictable as we would like to be. The goal of Brass Ring is to get back to being unpredictable,'' Heffelsinger said.

Customs officials received a warning in June 1997 that portions of the agency's enforcement strategy at the ports had been compromised. A June 20, 1997, memo from Assistant Commissioner Robert S. Trotter to all Southwest border port directors warned that ''traffickers have developed detailed knowledge and profiles of our port operations.''

Trotter said that spotters, commonly used by drug rings to warn of enforcement activity at the ports, ''have determined what cargo, conveyance or passengers we inspect, how many of those conveyances are checked on an average day, what lanes we work harder and what lanes are more accessible for smuggling.''

Banks acknowledged that customs has still not learned how to defeat the spotters, who work in the open on the U.S. side at the gates to the commercial ports.

''There's no question that people are sitting at the ports, shepherding loads and acting as guides,'' said Banks. ''We're trying to turn the tables on them and use them against themselves. Counter surveillance is part of [the Brass Ring strategy], but I can't say more.''

Mrs. FEINSTEIN. I thank the President, and I yield the floor.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator's time has expired. Under a previous unanimous consent agreement, the Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the Chair, and I, again, thank the distinguished senior Senator from California for her usual characteristic courtesy.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

Mr. BYRD. Mr. President, it is imperative that the Senate turn immediately to the consideration of the Intermodal Surface Transportation Efficiency Act of 1997. We now have less than 45 days remaining in which the Senate will be in session between today and May 1, 1998.

On May 1 of this year, our State highway departments throughout the land and our transit providers across the Nation will be forbidden by law from obligating any new Federal highway or transit funds. That is the drop-dead date. That is the deadline.

What will it mean to individual States when they no longer can move forward on a comprehensive highway construction program? What will it mean to your State? What will it mean to mine? What will it mean for our Nation's highway construction workers when they are thrown out of work, when that paycheck stops and when they have to struggle to put a meal on their family table?

What will it mean for our urban transit systems when they must cease progress on projects, projects that are needed to minimize congestion and to move our constituents to work, to schools, to places of worship, to child care centers, and back home?

It will mean disruption, deprivation, and, in cases where some construction projects need to go forward for the sake of safety, it will mean that accidents, injuries, and perhaps even death may be the result because of our delay—our inexcusable delay. There is no excuse for the delay.

On Monday of this week, the President sent his formal budget request for fiscal year 1999 to the Congress. That budget calls for the overall obligation ceiling for our Federal aid highway programs to be frozen. Now hear that! This is the President's budget, calling for the Federal aid highway program to be frozen for each of the next 6 years at the level enacted for FY 1998, namely, $21.5 billion.

The President ran for office the first time on a strong platform recommending more infrastructure in this country, more highways, safer bridges, but the President now is proposing an absolute freeze on highway spending for the next 5 years; never mind the tremendous unmet needs that exist across this Nation for bridge and highway construction, and for safety improvements; never mind a critical provision in the Taxpayer Relief Act of 1997, which is there by virtue of an amendment that was offered by my friend and colleague from Texas, Senator PHIL GRAMM; never mind that critical provision in the Taxpayer Relief Act of 1997, a bill that the President signed into law with much fanfare, and rightly so, last year.

That bill included a provision transferring the 4.3 cent gas tax—that had been used for deficit reduction since 1993—into the highway trust fund, so that it could not be used for other programs, instead of the highway program, but could be used to address these serious highway deficiencies. But even with this new source of revenue to the trust fund—roughly $7 billion per year—the President's budget now calls for the overall Federal obligation ceiling for highways to increase by how much? Not one copper cent! Not one penny; not one penny! Over the next 5 years, it is to be frozen.

Under the President's budget, the uncommitted balance of the highway trust fund will grow and grow and grow, like topsy. Based on estimates that I have received from the Congressional Budget Office, under the committee-reported bill, the unspent balance of the highway trust fund will grow from $25.7 billion at the end of this fiscal year to more than $71.8 billion at the close of the authorization period covered by the next ISTEA legislation.

At that time, therefore, there will be almost $72 billion that would just sit unspent in the highway trust fund; $72 billion paid by you out there, paid by you, the buyers of gasoline; $72 billion paid by our constituents—yours, I say to the distinguished Senator from California, and mine—paid by our constituents at the gas pump—money that will be deposited into the highway trust fund but not used. Not used.

Under the President's budget, the trust fund balance would grow even larger, since his 5-year highway freeze is some $9.6 billion less than would even be authorized in the committee-reported bill which we debated on this Senate floor for about 21 days last fall.

I do not believe that a majority of this body supports the notion that highway spending should be frozen for the next 5 years, while the unspent balance in the highway trust fund rises by roughly 300 percent over the next 6 years. I am confident that a majority of this body does not support that idea.

I do believe, however, that it is incumbent for this Senate to take up the highway bill, to take it up immediately and to make it clear that we do not support the President's proposal for a 5-year freeze on highway spending.

Let the President hear that message, loud and clear. We do not support a 5-

year freeze on highway spending, nor do the American people support that. I am confident they don't.

The financial needs of our national highway network vastly exceed our current levels of expenditure. If we freeze highway spending for the next 5 years, the gap between what will be needed just to maintain the present inadequate conditions of our Nation's highways, on the one hand, and what we will be able to spend, that gap is going to grow wider and wider and wider, and we will fall farther and farther behind.

Yet, Mr. President, the Department of Transportation has stated that our Nation would be required to spend an extra $15 billion each year above current spending levels just to maintain the current conditions of our Nation's highways. We would have to boost spending on highways by more than $15 billion a year to make the least bit of improvement overall in the condition of our Nation's highways. Now, that is what the U.S. Department of Transportation is telling us.

And what are the current conditions of our Nation's highways? At present, only 39 percent of our National Highway System is rated in good condition. That is not what Senator BYRD is saying, that is what Senator BYRD says that the U.S. Department of Transportation says. Fully 61 percent of our Nation's highways are rated in either fair or poor condition.

For our 42,794 mile interstate system, the crown jewel of our National Highway System, one-half of the mileage is rated in fair or poor condition. These figures only worsen when one looks at our other major and Federal State highways. In our urban areas, 65 percent of our noninterstate highway mileage is rated in fair or poor condition.

There are over a quarter of a billion miles of pavement in the United States that is in poor or mediocre condition. This is what the U.S. Department of Transportation tells us. There are almost 95,000 bridges in our country that have been classified as deficient, and within that total, roughly 44,000 bridges have been deemed to be structurally deficient, meaning that they need significant maintenance, rehabilitation or replacement.

Many of these bridges require load posting, requiring heavier trucks to take longer alternate routes. That affects our efficiency, our productivity and our overall economy. And an additional 51,000 bridges have been deemed to be functionally deficient, meaning that they do not have the lane width, shoulder width or vertical clearances sufficient to serve the traffic demand. The condition of our highway system is fast becoming a national disgrace.

As I said, Mr. President, to make any improvements at all in these conditions, to keep these conditions from worsening further, we would have to boost spending in our highways, according to the U.S. Department of Transportation, by more than $15 billion annually.

With that backdrop, it defies sanity that the administration wants to freeze highway spending over the next 5 years. Every driving American pays gas taxes. We have told them that that money would go toward increased highway investments. What will we tell them now? Mr. President, this Senate needs to take an immediate step to call up the highway bill and to tell the traveling public that we do not support freezing highway spending for the next 6 years.

Why wait until May 1, when our States will be prohibited from obligating any Federal funds on highway or transit projects? We should call up the highway bill and make it clear to America that we meant what we said when we voted to transfer the 4.3 cents gas tax from deficit reduction to the highway trust fund. An overwhelming majority of the Senate supported that transfer. The administration may have frozen the transportation budget, but this Senate does not have to freeze in a stupor of suspended animation while we watch our States careen toward a certain brick wall. There are only 45 days left. Now is the time—now is the time—to take the next step by moving to the highway bill.

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

The PRESIDING OFFICER. The Senator from West Virginia controls 6 minutes.

Mr. BYRD. I ask unanimous consent that I may reserve that time.

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

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I ask unanimous consent that I have 20 minutes, and then at the conclusion, following the time reserved for the Senator from West Virginia, that Senator BOND be recognized to proceed with the measure that was originally planned.

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

Mr. CHAFEE. Mr. President, last Monday several Senators came to the floor to express their concern because the Senate has failed to pass a reauthorization of the Nation's surface transportation programs. Senator BYRD was on the floor again Tuesday and indeed has been on the floor today, Thursday, on this same subject. As Senators and the American people listen to these expressions of concern, I hope they will keep the bigger picture in mind.

First, why hasn't the Senate passed an ISTEA II bill that would reauthorize our highway and transit programs? Well, it isn't for lack of trying, Mr. President. That bill was before the Senate for a period of more than 2 weeks at the close of the session last year. But Senate consideration of the bill was blocked by a filibuster, a filibuster that was supported by some of the very Senators who now complain about lack of action.

The majority leader filed four—not one, not two, not three, but four—cloture petitions to force action on the bill. I voted for cloture each and every time. Almost all the Members on this side of the aisle voted for cloture each and every time. But on the other side of the aisle we did not get much support for acting on ISTEA; in fact, we did not get any support. Considering that, Senators who now come to the floor demanding action on this bill used the procedural rules of the Senate to block action just a few short weeks ago. They voted to block ISTEA four times, as I say. Not once, not twice, not three, but four times they blocked action on proceeding to ISTEA.

On four separate occasions, when these Senators could have used their power as voting Members of this body to help the majority leader move this vital legislation forward, they voted no. They would not help. If they believe ISTEA is a vital bill, why didn't they help? With their help we could have completed Senate action last year.

Last Monday, one Senator even said that Congress is ''derelict in its duty'' because it has not acted on the ISTEA reauthorization. Now, ''derelict in its duty'' is a pretty strong statement. Well, who is it that has been derelict? It has not been the majority leader. He forced four cloture votes on this bill. I did everything I could to move the bill forward. I was ready then. I am ready now.

If dereliction of duty is a fair charge, I suppose it is a charge most appropriately aimed at those Senators who voted against cloture on this bill four separate times. There is a record. Anyone can look up and see who those Senators were.

Now, my second point goes to the schedule for completing action on ISTEA. The Senators who spoke Monday and Tuesday were talking as if Senate action is all that is needed to wrap this matter up now. They went on at great length about how the States need early Senate action so the States can plan for the coming construction season. These Senators expressed great frustration on behalf of the States because any further delay will greatly complicate the work of the States.

Well, I am sympathetic to the plight of our State transportation departments because this bill has been delayed. I wish we were at the end of the day and the States had the bottom-line allotments they need for their planning, but as everybody knows, Senate action on this bill is only a very small step in a long traveling process.

The House has to do a bill. That bill is likely to be very different from the Senate bill so, therefore, we have to resolve the differences in conference and then bring the bill back for passage in the respective bodies. Any State that did any planning based solely on a Senate-passed bill would be making a

great mistake. Frankly, they cannot make any plans until the entire process is completed.

Now, everyone knows that the House has made a very firm decision to postpone action on this transportation legislation, so-called ISTEA reauthorization, until the budget resolution for fiscal year 1999 is completed. That is a fact. The House has said that. Even if we passed ISTEA II in the Senate this afternoon, we would not speed up the process one iota. Even if we passed it last year when some of us were here on the floor ready to take action we would still be forced to wait for the House to complete its work.

As I look at the calendar, the House is making the task facing the States more difficult. But we cannot change the calendar by voting on this bill today on the floor of the Senate.

So what is really going on here, Mr. President? Why would Senators who voted to block action on this bill just a few weeks ago now come to the floor demanding action today? Why would Senators who know that we have to wait for the budget resolution to be completed before the House will act speak as if the Senate is ''dithering and dallying and delaying'' on this bill?

The real issue, Mr. President, is how much money are we going to spend on the highway program. That is the real question. The Senators who are clamoring for action now are the sponsors of a big amendment to dramatically increase Federal highway spending. They want the bill to come up now because they want their amendment for highway spending to be considered now in a budgetary vacuum with no other priorities competing for the dollars they would like to spend on highways.

A week ago, the President of the United States delivered his State of the Union Address. Perhaps the most memorable line in that speech was his call to use any future budget surpluses for ''Social Security First.''

If there is a surplus—and at this point everybody should keep in mind it is a projected surplus; the dollars have not actually come in yet—the President said Congress should not spend the money and Congress should not cut taxes; rather, we should use the surplus to shore up the Social Security system so that it can go on meeting the retirement needs of all Americans well into the next century.

Those Senators who are calling for action on the highway bill now are not exactly in the President's camp when it comes to Social Security first. They might be called the ''Highway First'' crowd. They want the Senate to take up the highway bill so that they can put a big proportion of the potential surplus into more highway spending before anybody else, including Social Security, can lay claim to that projected budget surplus.

''Highways First,'' that is their motto. I must say, I find their arguments astonishing, especially when they are expressed by the Senator from Texas. It comes down to this. ''The Government has a surplus. We must spend the surplus. To do otherwise would break a solemn oath we made to the American people.''

Now, the surplus that the Senator from Texas most frequently mentions in the context of the highway bill is one that will result because of action taken last year to put the revenue from the 4.3-cent gasoline tax imposed in 1993, that was passed to reduce the deficit—and the vote, as has been pointed out today, was to transfer that—into the highway trust fund.

In 1993, when the Democratic Party still controlled the Congress, gasoline taxes were increased by 4.3 cents per gallon with the revenue going to the general fund to reduce the deficit. The Senate Republicans all voted against that tax increase in 1993. But last year, with the Republicans in charge, the revenue from that tax increase was transferred into the highway trust fund from the deficit reduction area where it was before. And now we are asked to spend it.

Now, the notion—this is something I really want to stress —the notion that anybody promised the American people to spend that 4.3 cents on highway construction is preposterous. It is just the opposite. The American people were promised that that 4.3-cent increase would be used to bring down the deficit, not to increase spending programs.

Now that the deficit is under control, the Senator from Texas has led the charge to transfer the revenue from that tax to the highway trust fund. As a result, the highway trust fund is projected to run a big surplus in the future. And without even a blush, the Senator from Texas says we are bound by a solemn commitment to prevent that surplus. Pour it into highway spending whether it is needed or not—tax and spend. Never was there a more open and shut case of the ''tax and spend'' fever.

The clamor we have heard over the past few days to do ISTEA now is all about spending the surplus. And who is going to be first at the trough? It is not about dereliction of duty. Senators who voted four times to block the bill just a few weeks ago are in no position now to suggest that the Senate is shirking its duty.

And it is not about when this bill will ultimately be concluded. I wish it were done already. It is a burden, as anybody knows. No one knows better than some of the Senators on the floor today what it is like to manage a complicated, contentious piece of legislation such as the surface transportation legislation.

I wish that we could have accelerated the schedule by acting here in the Senate today. Unfortunately, we are not in control of the calendar. The House has decided, as I said before, to wait until the budget resolution has been completed.

What these Senators really want for the Senate is to vote on their amendment to spend more on highways before any other priorities can make a claim on this potential surplus. ''Highways First,'' as I say, is their motto.

I know there are many Members of this body who believe we should spend more on highways, maybe not ''Highways First,'' not take it all, but some more. For those Senators, I would make three quick points.

First, the bill reported by the committee—the committee I am chairman of that brought the bill to the floor—dramatically increases highway spending. It is up over 20 percent over ISTEA I. It is up $25 billion over the 6-year period. In the context of the balanced budget amendment reached last year, that essentially freezes discretionary spending over the next 5 years. And here is a program that gets a 20 percent increase. Thus, no one can argue that we did not do very well in connection with this piece of legislation.

As a second point, if Senators believe that even more is needed, they will have the opportunity to make that case when the Senate considers the budget resolution in March. The committee-reported bill tracks the spending levels given to us in the budget resolution last year. We have followed our instructions in and abided by the budget that this Senate adopted, and the ink is hardly dry on it. It was only signed by the President I believe in July. If the Senate changes course and wants to increase spending in the budget resolution for next year, then I would assume an amendment to ISTEA II to carry out that instruction would be adopted.

Third, Senators should be careful about the sequence of these decisions. I believe that many Senators have signed on to the so-called Byrd-Gramm amendment without fully understanding all the subtleties. It does authorize massive amounts of additional spending, but it also restructures who has first claim to the funds that are actually appropriated.

The Byrd-Gramm amendment increases the share of the pie going to 13 Appalachian Regional Commission States and to a trade corridor program that would benefit a few States, such as Texas. Their portion of the pie gets bigger. But if the pie itself does not grow because there is no room in the budget for larger appropriations, the net effect will be that all the other States will go down. In other words, they are locked in at this increased amount for the Appalachian Regional Commission States and this corridor dealing with the so-called NAFTA demands. That is locked in under the proposal that they have. And if we do not increase the overall spending, then theirs stays up there and it comes out of the portion allocated to all the other States.

A Senator voting for Byrd-Gramm now because he or she wants to increase highway spending authorization could actually cause his or her State to lose highway dollars if subsequent

budget decisions do not provide for increased highway appropriations. So I urge everyone to be cautious on this matter.

All these considerations have persuaded me that the wisest course is the one that Senator DOMENICI, chairman of the Budget Committee, has urged. Let's make the spending decisions in the context of the entire budget. I'm ready to go with ISTEA II now. I am more committed to getting ISTEA done than any other Member of this body. I want it completed, but I am willing to stand down for the time being because I believe the Senate will make better public policy if it considers highway spending in the context of the entire budget rather than in the vacuum of these early days of the session, as the highways first group has been urging.

I thank the Chair.

Mr. BYRD. Well, Mr. President, at last we have smoked him out. I have been speaking on this floor urging that the leadership bring up the highway bill. So we are having a good debate today. That is what we have been needing all along. The debate is just starting.

I'm glad that my friend has come out of the bushes. Let's debate this matter, but let's debate it with the bill before the Senate.

Mr. CHAFEE. Could I ask the Senator a question?

Mr. BYRD. Without it being charged as my time.

Mr. CHAFEE. How did the Senator vote on the cloture motion when we tried to move to this bill in October, late September, October?

Mr. BYRD. Mr. President, the Senator thinks he has me over a barrel. I voted against cloture. I make no bones about that.

But why finger point at that bill? Finger pointing isn't going to resolve the problems that are going to confront our highway departments and our Governors and our mayors throughout this country. That is not going to do any good, Senator.

Yes, I voted against cloture. I would like to see a campaign finance reform bill, but I would also like to see a highway bill. So forget what happened back there on cloture.

Lot's wife looked back and she turned to salt. Let's don't look back. Let's keep our promise, the promise that was made to bring up this highway bill. I didn't make that promise. The leadership of the Senate made that promise.

This is not a partisan matter, Mr. President. Republicans and Democrats buy gas at the gas station. Republicans and Democrats pay a gas tax. Republicans and Democrats use the highways of this country and the transit systems. Republicans and Democrats are injured and die when safety conditions get to the point where accidents occur. So this is not a partisan matter.

I know that the Senator from Rhode Island is against that amendment. He has been all along. He was against it when the bill was up last fall. That is a given. There is no surprise in that. But, Mr. President, the promise was made to bring up the highway bill.

Now, I have been around this Senate a long time, and this is the first time I have heard that the House controls the Senate calendar. I don't believe that, and I have reason to believe that if the Senate will act, the House might change its mind. Why should the House control the calendar here? The highway needs are out there. The Senator knows that. They exist in his own State. They exist in my State. They exist in every State in this country.

The highway departments and the Governors and the mayors don't know how to plan their budgets for this year because they don't know what Federal resources they can count on and they can't do long-term planning. When we talk about highways, those plans have to be long term.

I say to the Senator, why not have a bill up now? Let's debate it, but let's debate while we are on the bill. That is the promise that was made. I didn't make that promise. I'm not attacking any Senator personally. I am urging the Senate leadership to take up the bill. Why not have the bill before the Senate? Now, if we take up the bill, the House will surely move, I would think. The pressure will be on them. We can't base our actions on what the House might do.

The House schedule doesn't change the May 1 deadline, Senator. The May 1 deadline is only 45 days away, and the House schedule won't change that. That is approaching. Every day that we waste here, sitting on our hands talking about other matters, some of which are important, some of which are not—I pointed out just the other day that we wasted over 3 hours in one day in recesses and in quorum calls. We could be debating this bill, my friend. I hope that the Senator will join us in urging the leadership to bring this bill up. I would like to hear the Senator on the floor every day. I would like to hear his voice rising, up sometimes, up and down. I hope he will join us because I would like to be here with him. I would like to be debating the highway bill.

We have had a series of broken promises. Congress acted to shift the 4.3-cent gas tax to the highway trust funds. The people have been told, regardless of what the Senator says, the people have the understanding that that money is going to be spent on surface transportation programs. So we promised that, and then we promised to take up the highway bill. What about the highway needs? How can we ignore those needs when we have huge, unspent balances in the trust fund?

Mr. President, I just called my highway department this morning, and according to the West Virginia State Highway Commissioner, if ISTEA is postponed beyond the May 1 date, 75 highway projects, including about 20 bridges in West Virginia, will have to be delayed. This story can be told all over this country. Senator, you will hear it. You will hear it. I say that with the utmost respect. The Senator from Rhode Island is going to hear it.

Mr. President, do I have any time left?

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

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from Rhode Island has 5 minutes.

Mr. BYRD. He is my friend and I respect him highly, always have and will continue to do so.

Mr. CHAFEE. Mr. President, I want to say there is nobody I enjoy dueling with more on this floor than the Senator from West Virginia. We have been against each other on some rare issues. We have been together on many issues.

Mr. BYRD. I like it much better when we are together.

Mr. CHAFEE. As I listened to what he said, Mr. President, it brought to mind that old song, ''Will you love me in November as you did in June?'' And I say to the Senator, why didn't he love this bill in October as he does in February?

Mr. BYRD. Mr. President, I loved it. I loved it then.

Mr. CHAFEE. We had not one, we had not two, we had not three, we had four votes, Mr. President——

Mr. BYRD. Mr. President, I loved it.

Mr. CHAFEE. To try to move this bill that the Senator from West Virginia is embracing now.

His arms are around ISTEA II——

Mr. BYRD. Tell me now.

Mr. CHAFEE. With affection. Where was he when we needed him?

Mr. BYRD. I wanted to offer my amendment, but the amendment tree was filled.

Mr. CHAFEE. And we have those votes, and I looked; where is a vote—we are voting aye.

Mr. BYRD. I didn't see the Senator looking for me.

Mr. CHAFEE. I sought him, but I couldn't find him——

The PRESIDING OFFICER. We will have order.

Mr. CHAFEE. And I went away distressed.

So now we will have an opportunity in this bill, as the majority leader has made it clear the way we will proceed, and I look forward, as we get into this, that he will support a bill that will accomplish the goals of the Nation in the context of all the other demands that are placed upon the budget of the United States.

I will conclude by stressing once again that we have an increase in this bill this year, ISTEA II, over the past, of 20 percent when the other discretionary accounts are frozen. In other words, the nondefense items and the nonentitlement items are all frozen—whether you are talking Head Start, school lunches, the school programs, the health programs; they are frozen—and we get a 20 percent increase, which is pretty good, for this program.

I thank the Chair.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BYRD. Will the Senator from Missouri yield?

Mr. BOND. For a brief comment?

Mr. BYRD. For a brief comment.

Mr. BOND. I am happy to yield.

Mr. BYRD. I want to thank the distinguished Senator from Missouri for his patience in listening to this discussion that has been going on. He is going to manage a bill, but he has been very patient, and I think we imposed on him. I just wanted to apologize and thank him.

Mr. CHAFEE. I also thank the distinguished Senator from Missouri because he let us proceed. He was to go at 11:30. We thank him very much for his time.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I have to say that it is very enlightening to listen to my two distinguished colleagues debate this very important matter. Were it not for the schedule of the Senate, I far prefer to be enlightened and edified by these two great leaders of our time. Unfortunately, I believe the time has come for us to move on with other business.

HUMAN CLONING PROHIBITION ACT—MOTION TO PROCEED

Mr. BOND. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 304, S. 1601, regarding human cloning.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BOND. In light of the objection from the other side of the aisle, I now move to proceed to S. 1601.

The PRESIDING OFFICER. Is there debate on the motion?

Mrs. FEINSTEIN. Mr. President, I wish to debate the motion.

The PRESIDING OFFICER. The Senator from California may proceed.

Mrs. FEINSTEIN. Mr. President, this is a rush to judgment on one of the most fundamental issues of the 20th century. Mr. President, this is not renaming National Airport Ronald Reagan Airport.

Mr. President, I submit respectfully to the distinguished Senators on the other side of the aisle that this is a major debate that has scientific implications, moral implications and ethical implications. It is a debate, also, that involves one of the most difficult areas of science involving human genetics, with a vocabulary and a lexicon that is not understood by the great bulk of the American people and certainly not by many of us in the U.S. Senate.

Both the Bond-Frist bill and the Feinstein-Kennedy bill dealing with the subject of human cloning were introduced less than 48 hours ago—48 hours. No hearings have been held on either bill, no floor debate has been held on either bill. The medical community, the research community, patients with currently incurable diseases whose cure we might affect by both of these bills have barely read the bills, much less analyzed them.

As a matter of fact, the letters are now beginning to pour in. I ask unanimous consent to have printed in the RECORD a 9-page statement of the Biotechnology Industry Organization regarding legislation introduced to ban human cloning and a letter to Senator MACK from the American Association for Cancer Research.

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

STATEMENT OF THE BIOTECHNOLOGY INDUSTRY ORGANIZATION REGARDING LEGISLATION INTRODUCED TO BAN HUMAN CLONING

The Biotechnology Industry Organization (BIO) believes that it is both unsafe and unethical to even attempt to clone a human being. BIO strongly supported the review of this issue by the National Bioethics Advisory Commission (NBAC) and the moratorium on cloning imposed by President Clinton. We believe that the FDA has clear authority and jurisdiction and will, as they have stated, prohibit any attempt to clone a human being.

BIO is concerned about the scope and impact of legislation introduced to make it a crime with a ten year prison sentence to conduct biomedical research which may or may not have any relevance to the cloning of a human being. We are very concerned about the rushed process to pass legislation on this complex subject and the possibilities for unintended consequences. The scientific and legal issues with respect to any legislation regarding biomedical research are exceedingly technical, and a hastily drafted bill could advertently and inadvertently damage biomedical research on deadly and disabling diseases.

The Senate needs to adhere to the standard for doctors, ''first, do no harm.'' Biomedical research into deadly and disabling diseases is far too important to rush to enact legislation which would unequivocally undermine promising research and therapies. The Senate should be extremely cautious before it starts sending scientists to jail when the purpose of their research meets the highest moral and ethical standards and holds such promise for relieving human suffering.

ANALYSIS OF PENDING BILLS AND THE SCIENCE AT RISK

Several bills have been introduced in the Senate regarding human cloning. They vary widely in focus and precision. The three principal bills are S. 368, S. 1599, and S. 1602 and we have analyzed each of them here.

The first bill introduced by Senator Bond last year, S. 368, is one of the better drafted bills introduced in either body. It uses reasonably accurate terms to describe the applicable science and limits Federal funding for the cloning of a human being.

The new bill introduced by Senator Bond, S. 1599, would impose a ten year prison sentence for any individual for the act of ''producing an embryo (including a preimplantation embryo)'' through the use of a specified technology, ''somatic cell nuclear transfer,'' even if the production of such an embryo is for purposes unrelated to the cloning of a human being and even if the embryo does not contain nuclear DNA which is identical to that of an existing or previously existing human being (cloning). The bill goes beyond the issue of cloning to make it a crime to use somatic cell nuclear transfer of a nucleus derived from normal sexual union of an egg and sperm, which is obviously not cloning. It would also make it a crime to conduct some research seeking to generate stem cells to treat a wide range of deadly and disabling diseases, treatments which have nothing whatever to do with human cloning.[1]

The third bill, introduced by Senator Feinstein, S. 1602, would impose heavy civil fines for any entity that would ''implant or attempt to implant the product of somatic cell nuclear transfer into a woman's uterus . . .'' This sharply focuses the bill on an attempt to clone a human being and would not imperil biomedical research.

IMPACT OF BILLS ON STEM CELL RESEARCH

The current bill introduced by Senator Bond would, because it goes well beyond the issue of human cloning, imperil promising biomedical research, including research to generate stem cells. Instead of focusing on cloning, it makes it a crime to zygote or embryo through the use of a new technology, somatic cell nuclear transfer, even if the use of this technology is essential for the generation of stem cells to treat disease and where there is no intention or attempts through use of this technology to clone a human being. Basically the current bill would make it a crime to conduct research if it could possibly be related to the cloning of a human being even if it is not, in fact, conducted for that purpose.

This approach in S. 1599 goes beyond the issue of human cloning and would outlaw some research to create stem cells, including stem cells for the following types of treatments: cardiac muscle cells to treat heart attack victims and degenerative heart disease; skin cells to treat burn victims; spinal cord neuron cells for treatment of spinal cord trauma and paralysis; neural cells for treating those suffering from neurodegenerative diseases; pancreas cells to treat diabetes; blood cells to treat cancer anemia, and immunodeficiencies; neural cells to treat Parkinson's, Huntington's and Amyotrophic Lateral Sclerosis (ALS); cells for use in genetic therapy to treat 5,000 genetic diseases, including Cystic Fibrosis, Tay-Sachs Disease, schizophrenia, depression, and other diseases; blood vessel endothelial cells for treating atherosclerosis; liver cells for liver diseases including hepatitis and cirrhosis; cartilage cells for treating of osteoarthritis; bone cells for treatment of osteoporosis; myoblast cells for the treatment of Muscular Dystrophy; respiratory epithelial cells for the treatment of Cystic Fibrosis and lung cancer; adrenal cortex cells for the treatment of Addison's disease; retinal pigment epithelial cells for age-related macular degeneration; modified cells for treatment of various genetic diseases; and other cells for use in the diagnosis, treatment and prevention of other deadly or disabling diseases or other medical conditions.

To be precise, the current bill introduced by Senator Bond, S. 1599, would make it a crime to generate stem cells, for the above uses, where somatic cell nuclear transfer technology is used. It would not ban stem cell research where the stem cell is generated without the use of somatic cell nuclear transfer. It is not possible to say how much of this promising research will or might involve the use of somatic cell nuclear transfer. As described below, the bill would clearly ban the generation of any stem cells

[1] An identical bill has been introduced by Senator Lott as S. 1601 and this may be the bill which is called up for the Senate debate.