HHS Appropriations bill that we will provide adequate funding to MSHA to do more testing. The companies have shown that they will not carry out accurate tests. At the same time, I do not believe that we should simply increase our own Federal spending and testing, and meanwhile take the companies off the hook. The companies should continue to test, as well, and they must be held thoroughly accountable for their results. A more rigorous testing and monitoring program by MSHA would both improve the reliability of the test results, and it would also help us identify more of the individuals and companies that are cheating on the tests and endangering the health of miners.

MSHA already has increased its spot-inspections of mines that have turned in tests with suspiciously low dust levels. The agency should go further, and they should have the resources to ensure they are able to go further. I believe Federal enforcement agencies should consider whether increased criminal and civil prosecution is warranted for what appears to be the systematic circumvention of the Mine Safety Act. By enforcement agencies I am referring to MSHA and the Department of Justice.

The number of criminal prosecutions has been low if the claims asserted in the Louisville newspaper series are correct. Between 1980 and early 1997, there were only 96 cases in which criminal charges were successfully brought by the Federal government for violations in the area of coal mine safety and health. That is 96 cases over a 16 year period, or about six a year. It is my understanding that very few, if any, even of that small number of successful prosecutions were for the kind of cheating documented in the newspaper series. If cheating on dust sampling, which endangers people's lives, is as widespread as has been alleged, then I believe current Justice Department prosecution has been less than it should be. I do not know if the problem has been at MSHA, or if the problem has been at the Department of Justice. It may be difficult to prove this cheating. It may be difficult to get miners to testify. But if what the series portrays is true, then we are simply not doing a good job of deterring these illegal practices—practices which are causing illness and death.

Finally, the Secretary of Labor last year proposed new rules governing implementation of the Black Lung Benefits Act—rules which to my knowledge still have not taken effect. This set of proposed revisions to the Black Lung Benefits Act is sound, justified and needed. It should be implemented. Only about 7.5 percent of Black Lung claims have been granted since the early 1980s, with nearly one-third of claims tied up in lengthy hearing and appeals processes. Litigation consumes almost half of the Black Lung Trust Fund's administrative expenses. The Department of Labor's new rules were published in the Federal Register in January of last year, and they should be put into effect.

Mr. President, I will return to the floor to speak further about this issue before the year is over. I hope we can conduct a hearing in the Labor Committee. I hope we will provide adequate appropriations for the Mines Safety and Health Administration. And I hope we will do right for the safety and health of American miners. I intend to do all I can as a United States Senator to see that we do so. I yield the floor.

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

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

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1999

The Senate continued with the consideration of the bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, we have notified all Members that we would like to complete action on the transportation appropriations bill. I believe our managers are ready to move in that direction.

We have a list of amendments now that have been identified.

I ask unanimous consent that the following amendments be the only first-degree amendments in order to the pending transportation bill, and subject to relevant second-degree amendments:

Managers' amendments; Senator LOTT, three relevant amendments; Senator SHELBY, three relevant amendments; Senator FRIST, regarding cemeteries; Senator ABRAHAM, regarding name change, ITS; Senator SPECTER, regarding bond issue; Senator DEWINE, regarding Coast Guard; Senator MCCONNELL, regarding expedited review; Senator MCCAIN, regarding Amtrak bookkeeping; Senator LEAHY, regarding helicopters; Senator BYRD, two relevant amendments; Senator LEVIN, regarding commuter rail; Senator BUMPERS, relevant; Senator LAUTENBERG, relevant in three instances; Senator DASCHLE, three relevant amendments; Senator KERRY, one amendment on Amtrak; Senator FEINGOLD, relevant amendment; Senator JOHNSON, two relevant amendments; and Senator DURBIN, regarding smoking on international flights.

Mr. LAUTENBERG. And Gramm on drugs.

Mr. LOTT. And one last, Senator GRAMM possibly, one amendment regarding Coast Guard.

Mr. President, we deleted the Feingold relevant.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, while we have leadership on the floor, we have heard the list. That is now confined. I think we ought to get on with the business of getting it done. We could wrap this bill up in short order. There is a full agenda. The majority leader holds out a plum at the end of the ladder. The plum swings a week from Friday. This helps reach that goal.

I ask my colleagues if they want to get out of here on Friday—I know most of them would like to stay, but you will have to put up with us in getting out early.

Mr. LOTT. I thank the managers of this legislation. Senators SHELBY and LAUTENBERG are on the verge of setting a very commendable record. I ask that they quickly go through this list of amendments and dispose of them and, as soon as possible, identify any needed votes, get a time agreement on those votes, and get it done as quickly as possible. It would help us be prepared to move on to other appropriations bills and be able to get out of here as scheduled next Friday.

I yield the floor.

Mr. CHAFEE. Mr. President, 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. LOTT. 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. LOTT. I know the hour is beginning to get late and Members would like to know what they can expect tonight. We do have a list of amendments that the managers are working on right now. I believe most of those are going to be resolved without the necessity of extended debate, or even a vote. We should know in another 15 minutes or so exactly what that would be. I hope there won't be more than one or two amendments that require some time.

Our intent would be to do those amendments that are necessary and final passage, and then Senator DASCHLE and I would like to go to the District of Columbia appropriations bill. Senator COATS and Senator LIEBERMAN have an amendment that they are prepared to debate tonight, discuss tonight, and we hope to have all debate on that and other amendments, but the vote on the amendments and final passage we would propose would be done then Monday night at 5 o'clock in order to accommodate one of the managers.

Tomorrow, while we will have a vote or two early in the morning, we will go to the credit union bill early in the morning. There are not expected to be

any recorded votes on the credit union bill in the morning.

So in summation, if we could get cooperation on the transportation bill, we could wrap that up here relatively shortly and that would be the final vote tonight, if the Members would cooperate with us.

Senator DASCHLE has been working to get this amendment list identified. He agrees that this would be a good approach. The Members would have a decent night tonight, and we would be able to wrap up early in the morning and then go to the credit union bill.

I ask Senator DASCHLE if that is his thinking on this process at this time.

Mr. DASCHLE. Mr. President, I thank the Senators on both sides for the cooperation that they have given on transportation, as well as on the District of Columbia. I think we can accommodate Senators' schedules and the need to pass these two bills in an appropriate time by taking the actions the majority leader has outlined.

So I think this is a plan that will still require some cooperation and support on both sides of the aisle, but I think we can do it. I think it is the best way with which to accommodate schedules as well as the need to address these issues soon. So I certainly commend the majority leader for the recommendations and the proposal, and I hope we can complete our work.

Mr. LOTT. I thank the Senator. I thank the Chair.

I yield the floor. I observe the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The 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. Without objection, it is so ordered.

Mr. SHELBY. Mr. President, we are working together, Senator LAUTENBERG and I, and our staffs. We are close to resolving a number of amendments here, but there are some amendments that will require votes. I just ask the sponsors to come on down to the floor because we are probably going to have to have some votes on them: The McConnell amendment regarding expedited review, the McCain amendment regarding Amtrak bookkeeping, the Leahy amendment regarding helicopters, the Kerry amendment regarding Amtrak, and the Durbin amendment, smoking on international flights.

It is just a few minutes before 7. Senator LAUTENBERG and I are ready to move. If Members who are sponsoring those amendments would come on down and help us, I think it would expedite the bill tonight.

Mr. LAUTENBERG. Mr. President, I understand that the majority leader, the leadership has agreed we are going to finish this bill tonight?

Mr. SHELBY. That is right.

Mr. LAUTENBERG. It becomes a matter of Members' choice; you either finish it late or you finish it early. I am not dismissing the importance of anybody's amendment, but now is the time to do it. If it is not important enough to get over here and do it, I think we will try to expedite things, if the majority leader and minority leader agree, to get to a third reading. We have a couple of things we can do. We should do them. We are now looking at the possibility of clearing some.

So until then, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3326

(Purpose: To provide for expedited review to ensure constitutionality of section 1101(b) of the Transportation Equity Act for the 21st Century)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL] proposes an amendment numbered 3326.

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

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

The amendment is as follows:

On page 92, after line 25, add the following:

SEC. 3___. JUDICIAL REVIEW OF CONSTITUTIONAL CLAIMS.

(a) EXPEDITED CONSIDERATION.—It shall be the duty of a district court of the United States and the Supreme Court of the United States to advance on the docket and to expedite to the maximum extent practicable the disposition of any claim challenging the constitutionality of section 1101(b) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 113), whether on its face or as applied.

(b) APPEAL TO SUPREME COURT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any order of a district court of the United States disposing of a claim described in subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States.

(2) DEADLINES FOR APPEAL.—

(A) NOTICE OF APPEAL.—Any appeal under paragraph (1) shall be taken by a notice of appeal filed within 10 calendar days after the date on which the order of the district court is entered.

(B) JURISDICTIONAL STATEMENT.—The jurisdictional statement shall be filed within 30 calendar days after the date on which the order of the district court is entered.

(3) STAYS.—No stay of an order described in paragraph (1) shall be issued by a single Justice of the Supreme Court.

(c) APPLICABILITY.—Subsections (a) and (b) shall apply with respect to any claim filed after June 9, 1998, but before June 10, 1999.

Mr. MCCONNELL. Mr. President, the amendment I have sent to the desk simply says that the courts should tell us once and for all whether the DBE Program in the new ISTEA law is constitutional.

The new ISTEA law, now referred to as the Transportation Equity Act for the 21st Century, or TEA 21 for short, contains the much debated and long discussed DBE Program.

As every Senator knows, and as the Supreme Court has made clear, this Government-mandated program requires States and private contractors to treat persons differently based on race. The DBE Program, at a minimum, grants benefits and presumptions to some persons based on race and ethnicity but denies the same benefits and presumptions to others based on race and ethnicity.

Now, some say that the preferences are vast and pervasive, while others say preferences are only slight and incremental. Some say that preferences are unfair. Others say that any burdens placed on persons of the wrong race are far outweighed by the benefits for the citizens of the ''officially preferred'' race.

Mr. President, my views on this issue are well known and well documented in the CONGRESSIONAL RECORD. But the policy debate over TEA 21 and the DBE Program is over for now. We have moved beyond that policy debate for the moment. The only thing that the Senate can do today is to ensure the constitutionality of the DBE Program mandated in TEA 21. That is precisely what my amendment does.

Mr. President, when the topic is racial preferences, it is rare that both parties can find any agreement. But I think today is that rare moment. I think there are several areas of agreement today that should lead to unanimous approval of my amendment.

First, I think we all agree that the Supreme Court has acknowledged that racial preference programs subject persons to unequal treatment under the law.

In landmark Supreme Court cases, like Adarand v. Pena, and City of Richmond v. Croson, the Court made it clear that programs doling out different presumptions, benefits, and burdens based on race, in fact, subject Americans to unequal treatment under the law.

In the words of the Supreme Court:

> Whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and the spirit of the Constitution's guarantee of equal protection.

Moreover, the Court explained:

> We deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications ''constitutionally suspect,'' and subject to the ''most rigid scrutiny,'' and ''in most circumstances irrelevant'' to any constitutionally acceptable legislative purpose.

So, Mr. President, out of the mouth of the highest court in the land we hear our first undisputed fact: Programs like the DBE Program subject Americans to unequal treatment under the law.

Our second undisputed fact is that the Supreme Court will only tolerate such unequal treatment if the program can survive the test of strict scrutiny. That is, is the program, first, narrowly tailored; second, to remedy past discrimination?

Let me again quote the Supreme Court in Adarand. The Court said:

> We hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny.

This leads me to the third undisputed fact: Strict scrutiny is an extremely high constitutional hurdle. The administration has conceded the height and depth of the constitutional challenge following Adarand. It has spent a considerable amount of resources over the last 3 years trying to respond to Adarand.

Let me count the ways. First, the administration was forced to launch a governmentwide review of all racial preference programs; second, the President even promised to ''mend'' those programs that were broken; third, the Justice Department and the Commerce Department joined forces to embark upon an unprecedented national benchmark survey to help figure out whether various racial preference programs could survive the strict scrutiny test after the Adarand case; and finally, several media reports have indicated that the President has been forced to make good on the part of his promise, and that he has attempted to end or curtail several programs.

Mr. President, I think it is clear to all of us that strict scrutiny is an extremely high constitutional hurdle. Let me quote our colleague, Senator BYRD, on this point. My typically astute and always distinguished colleague from West Virginia explained in the CONGRESSIONAL RECORD that the Supreme Court's decision in Adarand ''makes it exceedingly difficult for any affirmative action program to pass constitutional muster.'' And as the Senate's unofficial historian, Senator BYRD dutifully noted that ''the last time the Supreme Court upheld a statute based on a racial or national origin classification under the strict scrutiny test was in 1944.''

Undisputed fact No. 4: Upon remand, the district court in Adarand followed the Supreme Court's lead and found that the DBE Program could not meet the test of strict scrutiny. Let me read the relevant portion of the district court's opinion and order:

> It is ordered that section 1003(b) of ISTEA, [that is, the Disadvantaged Business Enterprise Program] and . . . the regulations promulgated thereunder . . . are unconstitutional.

In fact, the district court, like many of us in the Senate, expressly questioned whether any race-based statute could be upheld as constitutional.

The Federal judge concluded, ''I find it difficult to envision a race-based classification that is narrowly tailored.''

The district court's ruling was not exactly a surprise to many of the Nation's constitutional scholars. As the Congressional Research Service has explained, the district court's decision in Adarand ''largely conforms to a pattern of Federal rulings which have invalidated State and local government programs to promote minority contracting in the following places: Richmond, San Francisco, San Diego, Dade County, Florida, Atlanta, New Orleans, Columbus, [the State of] Louisiana, and [the State of] Michigan, among others. . . .''

So let me repeat undisputed fact No. 4. The DBE Program was declared unconstitutional by the Federal court in Colorado.

Undisputed fact No. 5: The attempt to respond to Adarand did not involve any statutory reform whatsoever. The administration's reform of the law came in the form of a maze of complex and lengthy new regulations to try to fix the ISTEA program.

Undisputed fact No. 6: Members of both parties expressed concern about the constitutionality of the program, and many of those who voted to support it relied upon the administration's promises and proposed regulations. I am sure that my colleagues will remember that in March of this year, 1998, a divided Senate spent several hours over the course of 2 days debating whether a ''mended'' transportation program that continues to treat persons differently based on race would now be upheld as constitutional. Ultimately, 58 Senators took the administration at its word and reauthorized the program, but with a very watchful eye.

I think that my good friend from New Mexico summed up the feeling of those Senators who supported the new DBE Program, but had the following admonition. Senator DOMENICI said:

> I say to the administration very clearly right now: You have now put the signature of the Attorney General of the United States and the Secretary of [Transportation] on the answer to . . . seven questions [about the constitutionality of this program]. And this Senator [Senator DOMENICI, referring to himself] and I think a number of other Senators, is going to be voting to keep the provisions in the bill based on these kinds of assurances. . . . If, in fact, it comes out in a few months that the regulations are not being interpreted in a way suggested here, then I assure you that we will change them. . . . This better come as a very, very, serious challenge to the administration as they finally implement this program.

This candor and concern was also expressed by other Members on both sides of the aisle. Let me share an insightful colloquy pointing out the constitutional concerns. This colloquy involved the distinguished Environment and Public Works committee chairman, Senator CHAFEE; the ranking member, Senator BAUCUS; the chairman of the Subcommittee on Transportation and Infrastructure, Senator WARNER; and Senators DOMENICI and DURBIN.

Let me read those statements from the CONGRESSIONAL RECORD of March 5 of this year.

Senator DURBIN said:

> I believe the DBE program must be implemented in a manner that is constitutional. I believe that it is critical to the integrity of the program, and to the Senate's support of that program. Therefore, I would like to ask the chairman and ranking member—whose committee has oversight of the DBE program—is it their intention to press the Department to ensure that the new regulations pass constitutional muster?

That was a question being asked by the Senator from Illinois, Senator DURBIN.

Senator CHAFEE, the chairman of the committee responding:

> Yes, it is. We have made it clear to the Secretary that while one can never predict with 100 percent certainty what language may pass constitutional muster, the Committee expects the Secretary and his legal staff to do their utmost to make sure that the new regulations closely follow the guidance set forth by the Court in Adarand.

Senator BAUCUS, the ranking minority member of the committee says:

> I concur. It is the committee's intention that this program be carried out in a manner that is consistent with the Constitution. We expect no less. Secretary Slater is aware of, and I am assured agrees with, our views on this matter.
>
> Senator WARNER. As chair of the subcommittee that sponsored this bill, I have a particular interest in this matter and want to assure the Senator that adherence to Adarand is our intent.
>
> Senator DOMENICI. I appreciate the Senator's confirmation on this point. Let me ask further: Will the committee continue to be in touch with Department officials as the regulations are ready for release? And will the committee scrutinize the new regulations to ensure that the Department did in fact follow the Court's guidance under Adarand?
>
> Senator CHAFEE. Yes, we will.
>
> Senator BAUCUS. I can assure the Senator, and the Senate, that we will indeed.
>
> Senator WARNER. We certainly intend to.
>
> Senator DOMENICI. I am pleased to hear it, and I want to thank the Senators for taking the time to respond to my concerns.

Mr. President, I could stand here on the floor and read statement after statement made by Members of both parties during the ISTEA debate in March of this year that spell out the Senate's serious constitutional concerns about the DBE Program. But I think it is abundantly clear that every Member of the Senate understands the constitutional guarantees and obstacles that stand in the way of a Federal highway program that treats Americans differently based on the immutable trait of race.

Let me say that I wholeheartedly agree with and appreciate the constitutional concerns set forth by Senators CHAFEE, BAUCUS, WARNER, DURBIN, and DOMENICI. We must ensure that the new DBE Program is constitutional.

My amendment is perfectly consistent with these constitutional concerns, and I hope all Senators will fully support my amendment.

Undisputed fact No. 7: The proposed regulations were not final prior to our vote back in March on the DBE Program. In fact, the proposed regulations are still not final, even though the CONGRESSIONAL RECORD is filled with statements promising that the new DBE regs would be final in April or May of this year.

Well, Mr. President, we are now headed into August, and it is my understanding that the States and contractors still have no guidance from DOT on how to run this multibillion-dollar DBE Program in compliance with the Constitution, with Adarand, with the Supreme Court and the law of the land.

So as the statements that I read earlier from Senators CHAFEE, BAUCUS, and others made clear, we do not know for sure whether the regulations make the DBE Program more constitutional or less constitutional. We do not know for sure whether the proposed regulations will help or hurt, whether the regs alter the statute to allow the program to pass the stringent test of strict scrutiny, or whether the Federal courts will follow the district court in Adarand and continue to strike down the program as unconstitutional.

Mr. President, undisputed fact No. 8: The Senate should take its oath to uphold the Constitution seriously. Mr. President, let me say that all of us, when we come into the Senate, solemnly swear that we will support and defend the Constitution of the United States. I think we can all agree that this is a constitutional oath that should be taken seriously. In fact, for a good portion of our history, the Congress mandated an expedited Supreme Court review of any and all constitutional questions.

In more recent years, the Congress has focused the expedited review approach on those important laws that are surrounded by legitimate questions of constitutional validity. A quick search by the Congressional Research Service has documented several recent laws and bills that have included expedited Supreme Court review provisions. I think my colleagues will remember each of these. Let me name just a few: the Line-Item Veto Act; the Communications Decency Act; the census sampling in last year's Commerce-Justice-State appropriations bill; the District of Columbia Schools Opportunity Scholarships Act; and the Gramm-Rudman-Hollings Act. All of those rather well-known measures had an expedited review provision. These are only a few of the bills that have included expedited review provisions. These were generally supported and passed in both Houses of Congress for the simple reason that there were legitimate questions of constitutionality surrounding key provisions of the bills.

Mr. President, this leads me to undisputed fact No. 9: I think we can all agree that, at a minimum, there are legitimate questions of constitutional validity regarding the DBE Program. Both the Senate and the House acknowledged these questions when we had extended debate and a divided vote back in March on whether the program was constitutional.

Moreover, the TEA 21 law is direct evidence that both the Senate and the House feel that there are legitimate constitutional questions surrounding the DBE Program. Specifically, TEA 21 contains a provision that prohibits the Department of Transportation from cutting off Federal transportation funds whenever a State discontinues its federally mandated DBE Program in compliance with a court order striking down the program as unconstitutional. So, Mr. President, the very law we passed makes it perfectly clear that there are valid questions of constitutionality about the DBE Program.

The courts have also made it clear that the DBE Program raises genuine questions of constitutionality. Case law is replete with courts striking down programs that mandate different rules and different treatment for citizens of different races. The Congressional Research Service, as I noted earlier, has found that the recent Adarand decision by the district court conforms to a pattern of Federal rulings striking down racial preference programs across the country. I have here a long list of cases in the last few years where courts have declared programs like the DBE Program to be unconstitutional. This list shows court decisions by the Supreme Court, D.C. circuit, the third circuit, the fourth circuit, the fifth circuit, the sixth circuit, the seventh circuit, the ninth circuit, the eleventh circuit—all striking down race-based programs. The list also shows other unambiguous rulings of lower courts in Georgia, Connecticut, Ohio, Louisiana, Michigan, Colorado, and the city of Houston—again, all striking down race-based programs.

Mr. President, I ask unanimous consent that this list be printed in the RECORD.

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

RACE-BASED CONTRACTING PROGRAMS ARE ROUTINELY STRUCK DOWN

The Congressional Research Service has explained that the recent district court decision in *Adarand* conforms to a pattern of federal rulings across the country striking down race-based contracting programs as unconstitutional.

See City of Richmond v. *Croson,* 488 U.S. 469 (1989); *Lutheran Church-Missouri Synod* v. *FCC,* 141 F.3d 344 (D.C. Cir. 1998); *Monterey Mechanical* v. *Wilson,* 125 F.3d 702 (9th Cir. 1997); *Engineering Contractors Ass'n of South Florida, Inc.* v. *Metropolitan Dade Co. 1997 WL 535626 (11th Cir. 1997); U.S.* v. *Board of Education of the Township of Piscataway,* 91 F.3d 1547 (3d Cir. 1996); *Hopwood* v. *State of Texas.,* 95 F.3d 53 (5th Cir. 1995), *cert. denied,* 116 S.Ct 2581 (1996); *Podberesky* v. *Kirwan,* 38 F.3d 147 (4th Cir. 1994), *cert. denied,* 115 S.Ct. 2001 (1995); *O'Donnell Construction Co.* v. *District of Columbia,* 963 F.2d 420 (D.C. Cir. 1992); *Milwaukee County Pavers Ass'n.* v. *Feidler,* 922 F.2d 419 (7th Cir. 1991); *Associated General Contractors of California, Inc.* v. *San Francisco,* 813 F.2d 922 (9th Cir. 1987); *Michigan Road Builders Assoc., Inc.,* v. *Milliken,* 834 F.2d 583 (6th Cir. 1987).

Houston Contractors Association v. *Metropolitan Transit Authority of Harris County,* 993 F.Supp. 545 (S.D. Tex. 1997); *Adarand* v. *Pena,* 965 F. Supp. 1556 (D. Colo. 1997); *Associated General Contractors of America* v. *Columbus,* 936 F. Supp. 1363 (S.D. Ohio 1996); *Louisiana Associated General Contractors, Inc.* v. *Louisiana,* 669 So.2d 1185 (La. 1996); *Contractors Ass'n. of Eastern Pennsylvania* v. *Philadelphia,* 893 F. Supp. 419 (E.D. Pa. 1995), *affirmed* 91 F. 3d 586, (3d Cir. 1996) *cert. denied,* 117 S. Ct. 953 (1997); *Arrow Office Supply* v. *Detroit,* 826 F. Supp. 1072 (E.D. Mich. 1993); *Arrow Office Supply* v. *Detroit,* 826 F. Supp. 1072 (E.D. Mich. 1993); *Associated General Contractors of Connecticut* v. *New Haven,* 791 F. Supp. 941 (D. Conn. 1992); *S.J. Groves & Sons Co.* v. *Fulton County,* 696 F. Supp. 1480 (N.D. Ga. 1987).

Mr. MCCONNELL. Finally, Mr. President, undisputed fact No. 10: If we are willing to grant expedited review to ensure the constitutionality of everything from census sampling to vouchers to vetoes to balanced budget laws to Internet restrictions, then surely we would all agree that Americans deserve to know whether an important law involving race, civil rights, the 5th and 14th amendments, is constitutional.

We all know that there are many more cases striking down racial preference programs than there are cases striking down vouchers, or line-item vetoes, or balanced budget laws, or Internet restrictions. In fact, I will bet that you could combine and add up all of the cases striking down vouchers, line-item vetoes, balanced budget laws, and Internet restrictions, and that amount still would be less than the number of court cases striking down racial preference programs. Surely, if we have given expedited review to all of those other issues, then we are going to give expedited review to the critical issue of civil rights and the constitutional guarantee of equal protection of the laws.

Mr. President, I have spelled out 10 undisputed facts which serve as the common ground for the amendment I have offered. I think these facts are more than reason enough to immediately pass this expedited review amendment.

Let me simply close by pointing out that the time for debating the constitutionality of the DBE Program has passed. Now the courts must decide. My proposed amendment simply just says that the Supreme Court should tell us once and for all whether a transportation program that treats contractors and subcontractors differently based on race can survive strict scrutiny.

We must ensure the constitutionality of the DBE Program. We owe it to the States and localities that are receiving the billions of dollars in TEA 21 funds.

We owe it to the contractors who are threatened with the loss of jobs and contracts if they do not comply with the constitutionally suspect mandate of TEA 21.

We owe it to the minority-owned businesses who are forced to hang in the balance and twist in the constitutional winds wondering if the current program will survive a court challenge.

And, finally, we owe it to every American who sent us to the U.S. Senate to faithfully uphold the Constitution.

Mr. President, that is all this amendment would do. Regardless of how Senators may have voted on this measure back in March, this would quite simply just provide expedited Supreme Court review in this field. This is something we have frequently done, as I indicated in my prepared remarks.

I hope that this amendment will be cleared and accepted on both sides of the aisle.

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.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. MOSELEY-BRAUN. Mr. President, I would like to respond to the amendment by the Senator from Kentucky. But at the outset, I want to point out that inasmuch as this amendment came, we haven't had a chance to go back and check citations and check the references that he made in the speech. However, I would point out that at the outset, the simple and obvious undisputed fact is that the Governor of Kentucky does not like the idea of there being any disadvantaged business enterprise law in this great country, and wants very much to see it repealed. This amendment is no more and no less than a subterfuge for that. Frankly, as far as I can determine, it will effectively tie up the consideration of this legislation.

I tried to listen as closely as I could to the Senator from Kentucky in his argument with regard to the reasons for the expedited consideration.

I would point out that our Constitution provides a process, a procedure, for judicial review of legislation passed by this Congress, not the least of which requires the handling of a case in controversy. Those constitutional requirements and those procedures have been in place really since, I would say, the founding of this country. But that probably is not true. Marbury v. Madison was probably the first case in which the ability of the judiciary to determine the constitutionality of an act of Congress was upheld. And I think the precedent goes back to that.

The Senator from Kentucky wants to have this Senate say that the procedure that has stood in very good stead for the consideration of all the legislation that we have passed over the last couple hundred years is not good enough when the issue is race; that it is not good enough when the issue is gender; and, that is not good enough when the issue is providing some avenue for bringing people into the main stream of our American economy who had heretofore been excluded from it.

I point out that the DBE is shorthand for Disadvantaged Business Enterprise. It is in the first instance a business enterprise. It says that of the contracting that takes place in transportation, it is only right, it is only fair, that women, that minorities—and minorities meaning a whole range of people—have an opportunity to participate as equal partners in the conduct of business for the development of the Nation's transportation system. This is not anything, or this should not be anything dramatic. This shouldn't, frankly, rattle any cages, particularly when one considers that the amount of contracting the last time I looked was less than 5 percent for women and for minorities.

When you think about that, you are talking about women being roughly half the population of this country and minorities as roughly another 40 percent or 30 percent of this country. So the majority of the population is allowed an opportunity to participate at a minority level in contracting under the Department of Transportation by virtue of this Disadvantaged Business Enterprise Act. It has obviously been a matter of controversy precisely because it speaks to open the door to women, it speaks to open the door to minorities, it speaks to Federal contracting activity under the auspices of, again, the Disadvantaged Business Enterprise section of ISTEA, which is the Intermodal Surface Transportation and Efficiency Act.

This has been a controversy to the extent that the Supreme Court has already taken the issue up in another context at least with regard to a State court law in the Adarand v. Pena case.

In the Adarand v. Pena case, the Supreme Court said that the Federal Government must subject affirmative action programs to ''strict scrutiny,'' meaning that the programs must be ''narrowly tailored'' to meet a ''compelling government interest.''

The Court explicitly in that case stated that affirmative action is, in fact, still necessary. It wrote, and I want to quote from the Adarand case:

> The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and the government is not disqualified from acting in response to it.

I will even take issue with that part of the dicta in the case in that the DBE law, the Disadvantaged Business Enterprise law, applies not just to racial minorities; it applies not just to ethnic minorities, but applies to women as well.

So we have a situation in which individuals who, because of their situation, their status, their station in society, had not been previously able to do business, start out with something of a disadvantage, and it is for that reason that the program was initiated to correct that imbalance to bring some fairness, to bring some equity, to bring some fair share of the spending of Federal contracting dollars with the majority-minority community.

I say again, ''majority-minority'' community, because when you add women and African Americans, Hispanic Americans, Native Americans, Asian Americans, all of the different groups included in the definition, the last time I looked, when you add all of the minority groups, when you add women, you are really talking about a majority of the population of this country. The DBE, Disadvantaged Business Enterprise, section of the law allows them to participate in the transportation equity, in the Department of Transportation funding.

The question is, Why are we here to talk about this amendment? What does this amendment do, and why does it seek to do it? Well, what this amendment says is that the minute someone comes in and says, ''Oh, my goodness, I don't think that this is constitutional,'' that the case has to be expedited; that the district court advance, expedite over everything else.

That means, then, that if you are a district court judge, and someone comes in with a case that says, ''Ah-ha. I think that the program that is giving this female contractor the asphalt paving contract in my State, I think that is illegal.'' Then your case goes ahead of the murder cases on the docket; your case goes ahead of the drug cases on the docket; your case goes ahead of the antitrust cases on the docket; your case goes ahead of the civil rights cases on the docket; and your case goes ahead of everybody.

We have to ask ourselves: Does this make any sense at all? Why is there such an egregious harm? What devastating occurrence has taken place that would give this claim a right to overcome everything else on a court's docket and make it go directly to the Supreme Court? Do not pass go, do not take advantage of the procedures that have been placed literally, in many instances, since the founding of this Republic.

The Senator from Kentucky apparently thinks that opening up the door and allowing women and allowing minorities to have some part of the business enterprise of this country is just that egregious an occurrence that it ought to take precedence in its ability to be challenged in the courts; that we ought to throw aside hundreds of years of precedents in court, hundreds of years of procedure in order to make certain that a claim of this magnitude goes directly to the Supreme Court, and has an opportunity to be heard immediately before anybody else has the right to get protected.

I submit to my colleagues that the logic of this amendment is what fails it the most. It is simply not logical to put aside everything else on a court's docket to avoid the court of appeals altogether, to take this dramatic move

to redress what injury. What injury? I think the Senator from Kentucky fails to demonstrate the injury. The Senator from Kentucky also fails to talk about what standing, what case or controversy, what issue would give rise again to the need to undo all of the procedures associated with the challenging of the constitutionality of cases in the courts of this country.

So what this amendment really is about is attacking the legality of the DBE set-aside program through the side door. Would that it be through the back door, it would be even more direct. But this goes through a side door and takes with it the integrity of the court's procedures. This goes through a door that says, ''Whenever we don't like something in this Congress, we can just change the law and change the relationship between the courts and the executive branch and the legislative branch willy-nilly as we see fit and come up with a brand new procedure that we create out of whole cloth.''

That is what this amendment does. It creates from whole cloth a process of appeal for a set of circumstances, again, the injury of which, frankly, escapes me, and I think escapes a number of our colleagues.

I would point out that the front-door attack on the DBE Program failed, failed by 58 votes during the ISTEA debate, and it was, frankly, a very good thing, in my opinion. I understand the Senator from Kentucky and I see these things differently, but in my opinion it was a very good thing that a number of our colleagues recognized they would have to go home and explain to all of the women who had wanted to do business with the Department of Transportation the door was slammed in their face, and that wasn't a good thing. Then they would have to go home and explain to all of their minorities, be they racial minority or ethnic minority, why the door was slammed in their face. And that would not be a good thing.

The amendment was defeated in the front-door attack, and so now the Senator from Kentucky has developed a way to come at it sideways by saying, We are not going to ourselves repeal it, or attempt to repeal it, because we cannot repeal it; we are not ourselves going to take on straight forward the legality or the propriety of the Disadvantaged Business Enterprise Program, and we are not going to go in the back door, either. We are going to get in the side door. We are going to let anybody out there who might want to take up this cudgel for us, who might want to play politics in the courts for us, we are going to give them an opportunity to do it, and we are going to let them do it in an expedited way.

Well, let me suggest that this is not a place where new judicial procedures ought to be supported. There is no reason for this new set of procedures or for this new expedited appeals process. This controversial amendment does not belong on this bill because, quite frankly, I believe this amendment in and of itself would be enough to bring down this bill. I don't think the Senator from Kentucky or anybody else wants to see something as important as this legislation go down over this novel, creative, innovative, imaginative, interesting but bizarre, legal procedure that is being suggested by the Senator from Kentucky.

I have just received a note from the ranking member, and I don't know if he wants to say something or not, but, in any event, I certainly will defer to him and his leadership in this area. He has been exemplary over time.

Mr. President, I plead with the Senator from Kentucky to refrain from the controversy that is about to be visited on this very important legislation.

I thank the Chair, and I yield the floor.

Mr. LAUTENBERG. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. McCONNELL. Mr. President, this is not a complicated amendment. We had the debate back in March on the DBE Program and the Senate spoke. The Senate decided that it wanted to accept on faith that the administration would issue regulations that complied with the Adarand decision and the subsequent district court decision ruling the DBE Program to be unconstitutional. All the amendment of the Senator from Kentucky does is provide for an expedited review of those regs once they are promulgated and litigated as they will certainly be litigated.

It is not unusual on matters of extraordinary and constitutional significance for the Congress to say, ''We would like to get an expedited review, an answer to the issue.'' So that is all this amendment is about. It does not deal with the merits of the debate at all. The Senator from Kentucky did not support the program and did think the Senate ought to follow the Adarand case, but the Senator from Kentucky lost that debate, cheerfully, I might say, and all we are asking for here in this proposal is to get an expedited Supreme Court review of the new regs after they are promulgated.

I, frankly, thought this amendment would be accepted and am somewhat surprised that we are having a debate about it. But that is all this amendment does. Regardless of how Senators may have voted on the DBE Program back in March, this is not about that. All this amendment does is obtain an expedited decision by the Supreme Court once some regulations are, at long last, promulgated.

I see my friend from Alabama in the Chamber. Let me just mention a few other bills in which we did this. This is not unusual. We did it with the line-item veto, which the Supreme Court recently struck down. We had such a provision in the Communications Decency Act. We had it in the census sampling measure in last year's Commerce-State-Justice appropriations bill. We had a similar provision in the D.C. Schools Opportunity Scholarships Act and the Gramm–Rudman-Hollings Act.

Mr. President, this is not in any way extraordinary or unusual to hope that the Supreme Court might give us some expedited guidance is a matter of great importance.

Mr. President, I see the Senator from Alabama in the Chamber. I am happy to yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I had occasion to study this issue previously, and there is a serious question this country is facing. I believe the Supreme Court has given attention and careful review to it. I believe they are very, very sensitive to the national interest in having minority citizens, minority groups be able to rise and succeed in our Nation. At the same time, I think the Supreme Court is troubled by a policy that, in effect, says you have a preference simply because of the color of your skin. In fact, I think that they have said Adarand could violate the Constitution of the United States. That is a serious matter. I believe the Adarand decision is well decided. I believe in my judgment, and I don't claim to be a Supreme Court Justice, but in my judgment the present statute that we passed is in violation of Adarand. But, regardless of that, the President has said that he can cure the problems of Adarand through regulations and they intend to issue regulations that would avoid this conflict. I am not sure that is possible. It may be. But what I hear the Senator from Kentucky to say is we are not here to debate that issue again. We are simply saying that if this law, and the regulations imposed by it, violate the Constitution of the United States, before we pass it we ought to set up a system in which there can be a prompt review by the courts to judge on that.

That is all this does, it seems to me. I salute him for suggesting at least one small step that will reach a final conclusion of this matter.

Before the Senate Judiciary Committee we had hearings on this matter. We had the lady who was married to the president of Adarand Corporation. She testified how they had suffered because of the set-asides in the transportation law. I think it is a serious question. If it is outside the Constitution, they ought to have an expedited review.

I think the Senator from Kentucky has proposed a reasonable, fair amendment. I think any of us ought to be able to support that. I thank him for doing so, and I look forward to continuing this healthy debate about how we ought to disperse the benefits in

this country, what standards should be applied, and how our goods and services ought to be dispersed. I suggest they should not be dispersed on the basis of the color of one's skin.

Mr. President, I yield the floor.

Ms. MOSELEY-BRAUN. Will the Senator from Alabama yield for a question?

Mr. SESSIONS. I will be glad to. I have yielded the floor.

Ms. MOSELEY-BRAUN. Is the Senator from Alabama aware that the program applies not just to people based on the color of their skin, but also to women, as well as other ethnic groups who have not historically done business with the Department of Transportation?

Mr. SESSIONS. Yes, the Senator is quite correct. It does apply to a number of different circumstances. Some of those circumstances, I suggest, probably are constitutional. Many of those things may be required. Certain parts of it may not be. I suggest, with regard to those that may not be, let's go on and not have it take 3 years to get up through the court system. Let's have a review so there can be a prompt determination of what would be legitimate and what would not be.

Ms. MOSELEY-BRAUN. I thank the Senator.

The PRESIDING OFFICER (Mr. FRIST). Is there further debate on the amendment?

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

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

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

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to amendment No. 3326.

The amendment (No. 3326) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JEFFORDS. Mr. President, I want to thank Senator SHELBY and the entire Senate Transportation Appropriations Committee for their work putting together this legislation. I would like to briefly engage my colleagues in a colloquy on an issue important to me and my constituents in Vermont; preservation of our nation's historic covered bridges. The recently passed federal transportation legislation, ISTEA–2, contains language authorizing funding to protect historic wooden covered bridges. The National Historic Covered Bridge Preservation Act asks the Secretary of Transportation to study the appropriate techniques to protect and preserve covered bridges, distribute this information to states and towns across the country and grant funds to fully repair and protect these beautiful old historic structures. The bill, that is now law, authorizes $10 million for these activities. I understand the difficulty my colleagues had in distributing funds in this legislation. Although no funds were directly appropriated for these activities, I would ask the Chairman of the Senate Transportation Appropriations Subcommittee if he would agree that preservation of historic covered bridges should be a priority?

Mr. SHELBY. Mr. President, I agree with the Senator from Vermont that preserving our nation's historic covered bridges should be a priority for the U.S. Department of Transportation and transportation departments across the nation.

Mr. JEFFORDS. Would the Senator agree that from available funds included in this legislation for the Federal Highway Administration that priority should be given to funding the collection and dissemination of information concerning historic covered bridges, conduct research on the history of historic covered bridges, and study the techniques for protecting historic covered bridges from rot, fire, natural disasters or weight related damage? Would the Senator agree that the Federal Highway Administration should use available funds to develop and publish guidance for implementation of the National Historic Covered Bridge Preservation Act?

Mr. SHELBY. Mr. President, I agree with the Senator from Vermont that the Federal Highway Administration should make this a priority and move to publish guidance as soon as possible.

Mr. JEFFORDS. Would the Chairman of the Senate Transportation Appropriations Committee agree that funding for the repair and reconstruction of covered bridges should be given priority within the Bridge Discretionary Program?

Mr. SHELBY. Mr. President, I agree with the Senator from Vermont that every effort should be made by the Secretary of Transportation to use funds from within the Bridge Discretionary Program to repair and rehabilitate covered bridges across the nation.

Mr. JEFFORDS. I would like to thank both Chairman CHAFEE and Chairman SHELBY for their commitment to covered bridges and for working with me to ensure that the program is fully funded within available funds at the U.S. Department of Transportation.

Mr. GORTON. Mr. President, I rise today in support of the Transportation Appropriations measure crafted by Senator SHELBY. This bill takes a significant step forward in addressing the transportation needs of the nation, and more specifically of Washington state.

As the Aviation Subcommittee Chairman, I am especially pleased with the generous increase in funding for the Airport Improvement Program. The Airport Improvement Program provides valuable grants to fund the capital needs of the nation's commercial airports and general aviation facilities. It allows the Secretary of Transportation and the FAA Administrator to fund planning, design, and construction of airport projects directly affecting aircraft operations, including runways, aprons, and taxiways, with the purpose of maintaining a safe and efficient nationwide system of public use airports.

Adequate funding for AIP is integral to addressing the infrastructure needs of our national aviation system. The GAO estimates that the gap between available funds and projected maintenance and construction costs for airports is almost $3 billion. The $2.1 billion included in this measure for AIP is a significant step toward bridging this gap. As the Aviation Subcommittee Chairman, I will continue to look for the best possible way to assist the Appropriations Committee in meeting the infrastructure needs of our aviation system.

Chairman SHELBY also included several aviation related items that will have a positive impact on Washington state's airports. Inclusion of $6 million for the Contract Tower Cost-Sharing Pilot Program is certainly a positive development for my state. This new program, which I am also working on in the context of the FAA reauthorization measure, will allow local airports that fall below the eligibility criteria for the existing program to cost-share with the FAA. The $6 million included by Chairman SHELBY will cover cost-sharing arrangements for approximately 30 contract towers across the country. Olympia and Felts Field are the two affected airports in Washington state that will be able to maintain their contract towers and, therefore, not diminish the current level of safety.

I am pleased that the Chairman included $3 million for the Tactical (Transponder) Landing System. This system was recently certified by the FAA and could provide immense benefit to airports that are surrounded by geographical barriers such as mountainous terrain or approaches over water that render the current Instrument Landing System useless. With the installation of a TLS, Boeing field, whose current approach patterns cause significant noise problems for local residents, will be able to structure much more agreeable landing patterns. Moscow/Pullman airport, which is also named in the bill, should be an excellent test of the effectiveness of a TLS in mountainous terrain.

I would also like to commend Chairman SHELBY for giving priority consideration to Felts Field, Pangborn Field, Paine Field, and Spokane International airports, which all face unique problems that I look forward to working with the FAA to resolve in a safe and timely manner.

This bill is not only positive for aviation. The Chairman has realized that innovative thinking and problem solving in the transportation field deserves priority consideration. This is demonstrated in the Transportation Planning, Research, and Development account, where the Chairman included two projects in Washington state that will serve as models for communities across the nation. The first is a freight mobility study instigated by the Kent, Washington Chamber of Commerce that will bring together representatives from federal, state, and local governments, as well as the shipping, trucking, and rail industries, along with organized labor, to brainstorm on ways we can make the existing system work better, realizing that we have finite resources with which to improve our aging infrastructure.

The other Washington state project included in the Transportation Planning, Research and Development account is the Chehalis Basin/I–5 Flooding project. Currently, flooding in the Interstate 5 corridor near Centralia/Chehalis in Washington state seriously compromises freight mobility, with damage and impact estimates of $50–80 million per day. The Washington State Department of Transportation (WSDOT) is currently planning to solve the problem by elevating the freeway for almost three miles. This would be a typical transportation project, but it would also exacerbate the flooding problem in the Chehalis River Basin and have extensive environmental impacts. The plan is estimated to cost $98 million, with funding anticipated from the federal roads allocation to the states. As an alternative, Lewis County is leading a consortium of three counties (with Grays Harbor and Thurston), two cities (Centralia and Chehalis) and the Chebalis Tribe to eliminate the I–5 flooding problem by solving the flooding problem in the upper Chehalis River Basin. Work on this project is well-advanced, and cost estimates range between $60–80 million. I look forward to working with the Chairman to ensure a significant federal contribution to assist in the costly permitting process that will make this common sense alternative solution a reality.

The Chairman was also very generous in his support for the Regional Transit Authority, which was recently renamed Sound Move. On November 5, 1996, the voters of the Puget Sound region approved this $3.91 billion transportation proposal. Sound Move will increase the capacity of the region's transportation system through a fix of light rail, commuter rail, High Occupancy Vehicle (HOV) expressways, regional express bus routes and ''community connections'' (such as park-and-ride lots and transit centers). Once completed, transit customers will be able to travel throughout a densely populated tri-county region in the state—Pierce, King and Snohomish counties—by local bus, regional bus, light rail and commuter rail, using a single ticket.

By passing the Sound Move ballot measure, voters in the Puget Sound region agreed to provide the local funding portion of the plan through a .4 percent increase in the local sales tax and a .3 percent increase in the motor vehicle excise tax. These tax revenues will provide a stable, dependable, dedicated source of local revenue for building, maintaining and operating the system. Coupled with revenue collected from bonds and fareboxes, this funding will provide a 62 percent local match for the light rail and commuter rail portions of the project and over 80 percent of the total $3.91 billion project.

Despite the voters' clear willingness to pay for an improved transportation system, the Regional Transit Authority needs federal financial assistance to successfully implement the light rail and commuter rail portions of this plan. The rail segment of the Sound Move proposal includes: a 25-mile light rail line with 26 stations between Seattle's University District and the City of SeaTac via downtown Seattle and the Seattle-Tacoma International Airport; a 1.6-mile light rail line between downtown Tacoma and the Tacoma Dome train station; and an 81-mile commuter line using existing freight track between Everett and Lakewood with at least 14 stations.

Mr. President, Sound Move is one of the most cost-effective projects in the nation, with one of the strongest local commitments. In fact, Sound Move ranked Medium/High in all categories in the recently released Department of Transportation FY '99 Report on Funding Levels and Allocation of Funds for Transit Major Capital Investments. These rankings demonstrate the overall strength of the project, which boasts ridership and cost effectiveness estimates that unquestionably rank it among the top new starts in the country. The voters around Puget Sound are eager to join the federal government in making this project a reality and it is my hope that the $60 million included in this measure for the rail component of Sound Move will be supplemented by the full $18 million which was included in the House bill for buses.

Mr. President, once again, I would like to thank the chairman for crafting a fair measure that adequately funds our national priorities while realizing and addressing the unique transportation problems facing Washington state.

Mr. MCCAIN. Mr. President, the Senate has completed action on several of the annual appropriations bills that fund the federal government and its many programs.

The appropriations bills that have cleared the Senate to date contain many good provisions and generally provide appropriate levels of funding to continue the necessary functions of the federal government. But, Mr. President, these bills regretfully continue the practice of earmarking billions of taxpayers dollars for pork-barrel projects.

Over my tenure in Congress, I have consistently fought Congressional earmarks that direct money to particular projects or recipients, believing that such decisions are far better made through competitive, merit-based guidelines and procedures.

Traditionally, earmarking has been more geared to political interests rather than public needs and priorities. Highway demonstration projects, earmarked by Congress, have been a classic case-in-point. Most of these projects, which totals more than $9 billion in the Transportation Efficiency Act for the 21st Century (TEA–21), don't even appear on state priority lists.

The same is true for many other Congressional earmarks. I find this an appalling waste of taxpayer dollars. And, S. 2307 is typical of the types of earmarks and set-asides that Members add to the multi-billion dollar appropriations bills we annually consider.

This bill and report earmark more than $1.1 billion for site-specific bridge repairs and airport projects, research activities at selected universities, intelligent transportation projects, ferry systems, road improvements in ski areas, state-specific snow removal activities, bus purchases and transit projects.

Mr. President, S. 2307 continues Amtrak's subsidies yet goes so far to concoct yet a new spending scheme to pay for its operating costs. I will be proposing an amendment to ensure Amtrak's financial situation is not a moving target and that the integrity of the reform legislation enacted just over six months ago is not jeopardized by the proposals in this measure.

This bill further earmarks several million dollars of Amtrak's capital funds for new projects associated with Amtrak. The Committee report earmarks $1.4 million to relocate an Amtrak passenger station in Pennsylvania, $2.5 million to refurbish two turbo trainsets for Amtrak's empire corridor, and $1 million to install a speed monitoring system on locomotives operating between New Haven, CT and Boston, MA. The report also directs that $800,000 be used to restore the historic Southern Pines, NC, railroad station, which is owned by the State of North Carolina and served by Amtrak's Silver Star route.

Didn't the Congress agree last year that Amtrak needs to operate like a legitimate business? Isn't that why we approved legislation which placed Amtrak on a glidepath to free itself of operating subsidies? How is directing Amtrak to carry out these projects or requiring it to spend its resources on certain stations going to help Amtrak ever achieve its financial goals? Amtrak should be permitted to expend its funds on those projects it deems most critical, not on projects required by the whims of Congress.

Mr. President, in addition to the types of earmarking I have mentioned, the Appropriators have taken a number of actions that fall squarely under the authorizers' duties. For example, the bill would prohibit the Coast Guard from implementing any new navigation user fees. This means the Administration would be prevented from implementing even reasonable new user fees. I understand the concerns that the user fee proposed by the Administration are discriminatory in that they would target only certain users of the navigation system, but the language in the bill is overly restrictive.

Mr. President, there are some small earmarks in this year's transportation appropriations bill as well as some very large earmarks. For example:

More than 80 percent of the total funding provided for Intelligent Transportation Systems deployment projects are earmarked. The bill specifically sets aside more than $84 million for projects in 20 cities and counties, and in 13 states.

Although no dollar amounts are set for individual bus projects, the bill prohibits the Federal Transit Administration from using any of the $393,550,000 provided in the bill for any project not designated in S. 2307. All of the 150 TEA–21 authorized bus projects are included in the bill, and more than 150 new projects are named. Some of these projects have been earmarked in the past and others are new additions to the bus earmark parade.

The appropriators have earmarked all of the $902,800,000 provided for the new transit and transit system extensions program. Many of the projects are unauthorized and were not requested by the Administration.

Examples of the earmarks for unauthorized projects include $2.5 million for multimodal transportation in Albuquerque/Santa Fe, New Mexico; $8 million for a transitway corridor in North Miami; and $250,000 for a micro rail trolley system in Sioux City, IA.

Why are the appropriators so reluctant to permit projects to be awarded based on a competitive and meritorious process that would be fair for all the states and local communities? I suspect it is due to the fact they doubt the merits and worth of the very projects they are earmarking.

The bill contains a legislative amendment to section 1110 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). By making a simple definitional change, the provision would modify ANILCA to permit helicopters to land in all conservation system units in Alaska, including National Forests, National Wildlife Refuges, National Parks, and National Wilderness Areas. The legislative changes could result in large-scale helicopter tourism in these sensitive conservation system units. The transportation appropriations bill is not the appropriate forum to address a controversial environmental issue. A helicopter's ability to hover over an area is disruptive to wildlife, including large game species and nesting birds. In addition, the capability of a helicopter to land in areas where airplanes cannot causes concern for the integrity of the habitat.

I have only mentioned a few of the examples of earmarks and special projects contained in this measure and I will not waste the time of the Senate going over each and every earmark.

Mr. President, I also want to express the critical need for Congress to send a very clear message to Secretary Slater regarding the Department of Transportation's treatment of the committee report accompanying this bill. Earlier this week, I chaired a hearing on the Department's actions regarding discretionary funding decisions. Believe it or not, some of the DOT modal administrations do not even understand the clear delineation regarding statutory bill language and a committee report. While I did my best to impress upon these modes—particularly the Federal Transit Administration—that report language does not have the effect of law, I am still not sure they get it.

Therefore, I urge Secretary Slater to take immediate action to educate his Department on the very clear and significant differences between the bill language and report language. Report language is not law. Report language does not have the effect of law. Report language is advisory. It's as simple as that.

CONTRACT TOWER COST-SHARING

Mr. FAIRCLOTH. I would like to ask the distinguished chairman of the Transportation appropriations subcommittee about the provision in the bill that includes $6 million for an FAA contract tower cost-sharing program. I have several contract towers in my stat that would benefit greatly from such a program. What is the intention of this provision?

Mr. SHELBY. The FAA contract tower program has been proven to be a very cost-effective way for the FAA and local airports to work as partners to improve air traffic safety in many smaller communities. In fact, the Department of Transportation Inspector General recently determined that the program provides quality air traffic control services at a lower cost compared to the FAA. This cost-sharing program would enable some airports that fall just below the eligibility criteria for a contract tower to retain their air traffic control services by paying for a share of the costs. The Committee believes that this program will improve aviation safety in small communities at a minimal expense to the FAA.

HIGHWAY RESEARCH AND DEVELOPMENT, BRIDGE STRUCTURES AND THE UTAH TRANSPORTATION CENTER

Mr. BENNETT. Mr. President, I rise today to enter a colloquy with the Chairman of the Subcommittee on Transportation Appropriations, Senator SHELBY. The topic of my colloquy addresses the ongoing design/build work on Interstate 15 through the Salt Lake Valley and the unique opportunity this project presents to conduct seismic and other bridge structure research on existing overpasses that will soon be replaced.

I would like to thank the Transportation Appropriations Chairman for his interest and support of research on Interstate 15 bridge structures during the reconstruction of this important segment of highway. The Subcommittee on Transportation Appropriations included language in its report (105–249, page 96) which provides $2,000,000 for research on Interstate 15 bridge structures. This report language directs the Federal Highway Administration to make this money available to the Utah Department of Transportation (UDOT) and the Utah Transportation Center (UTC), Chairman SHELBY, am I correct in understanding that UDOT was included in this language primarily to facilitate the flow of these federal funds to the Utah Transportation Center which will administer the research done by Utah State University, University of Utah and Brigham Young University?

Mr. SHELBY. My colleague from Utah is correct in his understanding of this situation. Since the Federal Highway Administration already has a relationship developed with UDOT, the Committee included the state agency to facilitate the flow of these research funds to the Utah Transportation Center made up by the universities mentioned. The Committee believes that these funds should be made available to the UTC expeditiously so that this opportunity for bridge structure research is not lost.

Mr. BENNETT. I thank the Chairman of the Subcommittee for his clarification and I thank the Chair for its time and attention on the Senate Floor.

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT APPLICATION FOR A LETTER OF INTENT

Mr. MACK. Mr. President, southwest Florida is one of the fastest growing areas in the country. Not surprisingly it is also my understanding that RSW is the third fastest growing airport in the United States. Additionally, I am told RSW has experienced an average annual growth of 9.2 percent over the past ten years.

Due to this unprecedented growth, RSW has embarked upon a major expansion program which includes construction of a new terminal and runway. This project is one of the State of Florida's most important airport projects and it has received substantial funding from the State. Moreover, the Federal Aviation Administration has provided discretionary funding for this worthy project due, in no small part, to the support of the distinguished Chairman of the Transportation Appropriations Subcommittee, Senator SHELBY, and his subcommittee over the past two years through the prior Transportation Appropriations bills. I very much appreciate the support of the Senator for RSW and its expansion project.

Additionally, as the Senator may be aware, earlier this year RSW submitted a request for a Letter of Intent to the FAA in order to support their expansion project from the agency. Over the course of the last several years, recognizing the budget constraints which the FAA must operate under, RSW officials have worked hard to significantly reduce the federal share of this project by more than 30 percent.

I believe the Chairman of the Subcommittee can appreciate the efforts of RSW, in working with the FAA, to craft a plan which meets the needs of the airport yet substantially cuts costs in an effort to remain within the FAA's anticipated budget constraints. I feel confident this is the type of cooperation from a project which the FAA should consider for priority LOI consideration.

Mr. SHELBY. I thank the distinguished Senator from Florida for his comments regarding our subcommittee's past support of the Southwest Florida International Airport. The Senator has been very active in keeping the subcommittee informed on the progress of the expansion at RSW. Because of this, I am well aware of the intense growth that this airport has experienced over the past several years.

Likewise, I am aware of the efforts of RSW to work with the FAA in developing an LOI request, and that this effort has resulted in a substantial reduction in their request, making it reasonable within today's budget environment. I believe the behavior and efforts exhibited by RSW in working with the FAA, as well as their established need, are exactly the sorts of things the FAA should be looking for when considering LOI requests. Accordingly, I encourage the FAA to give priority consideration to RSW's request for a Letter of Intent.

Mr. MACK. I thank my colleague from Alabama for his past commitment and support of the Southwest Florida International Airport (RSW) and look forward to continue working with him in the future.

KEEP HELICOPTERS OUT OF WILDERNESS

Mr. LEAHY. Mr. President, there are maybe thirty-five legislative days left this Congress. We have passed six out of thirteen appropriations—and those have been the easier ones. Now—we are facing the appropriations bills that are bogged down with legislative riders and have already invoked Presidential veto threats.

The Transportation Appropriations bill though is fairly clean and we might be able to pass it tonight. Unfortunately, the temptation to put environmental riders on this bill could not be resisted. Section 342 of this bill will overturn eighteen years of national environmental policy, open some of the most pristine wilderness in the country to helicopter landings.

Mr. President, I was here when the Alaska National Interest Lands Conservation Act was passed by Congress. I remember the careful balance that was crafted to pass this landmark legislation. The question of allowing helicopters was raised at that time and the answer we came up with was to not allow them in wilderness areas except for emergency situations. If you look at the legislative history included in the Senate Report for ANILCA it specifically lists what transportation was allowed in wilderness areas and helicopters are not one of them.

Instead, it directed the Secretary of the Interior to allow airplanes to be used in wilderness areas for traditional activities. Mr. President, I understand why this exception to the national Wilderness Act was made for Alaska and I supported it at the time. But I supported it as part of a larger compromise. One that this language will now undo.

Two years ago, the Forest Service conducted an Environmental Impact Statement on this same proposal and concluded that helicopters were not airplanes and were not a traditional means of access to the wilderness areas. Obviously, some of my colleagues do not like this conclusion and felt that tacking an environmental rider onto the transportation appropriation bill was the best way to get around it.

The Interior Department has also objected to this language due to the impact on wildlife in these wilderness areas. Mr. President, I think we all know that a helicopter flying overhead is much louder than a small airplane flying overhead. Helicopters blast the adjacent area with a minimum of 100 decibels or more.

But this language is not about just sheer noise. It is also about allowing helicopters to hover and land anywhere in these areas—the remote reaches of the Tongass National Forest, the glaciers of Kenai Fjords National Park and even the inlets of Glacier Bay.

Although it may seem like it now, I am not the only person speaking out against this language. I have over thirty five letters from outfitters, bush pilots and tour guides in Alaska who oppose this language.

So, Mr. President, I simply ask: What is the rush? Why are we including language in a transportation appropriations bill that rewrites legislation that has been on the books for eighteen years, on which no hearings have been held and that has been recommended for a veto?

Mr. FEINGOLD. Mr. President, I want to express my concern about Section 342 of the Senate FY 99 Transportation Appropriations Bill. That section creates an exception in the Alaska National Interest Lands Conservation Act allowing helicopter landings by the general public on federally-designated wilderness and other protected lands within Alaska.

Federal wilderness lands in Alaska are covered by two federal laws: the Wilderness Act of 1964 and the Alaska National Interest Lands Conservation Act, known as ANILCA. To describe the interaction of these statutes in more detail, Mr. President, the Wilderness Act establishes a federal definition of wilderness, and governs the use and administration of land within the various states that have been designated by Congress as federal wilderness. ANILCA, which passed in 1980, is the statute which designated various lands within the state of Alaska as federal wilderness. It also conferred other federal land use designations, creating parks, monuments and other protected status lands in Alaska.

The reason I am concerned about Section 342 of the bill before us is that it replaces the word ''airplane'' with ''aircraft'' within ANILCA. Though such a change would appear benign to those who do not know the statute well. However, that is not the case. The practical effect of the proposed amendment would be to permit helicopter landings by the general public in federal wilderness areas and other protected lands in Alaska.

Why is this such a concern, Mr. President? There are two major reasons why I find this one-word switch troubling. First, expanding the type of aircraft allowed in federal wilderness areas violates the Wilderness Act and sets an alarming precedent.

Section 1110 of ANILCA presently permits the general public use, on lands protected under the act, of ''snow machines, motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities.'' Although airplane use is specifically permitted in Alaska under ANILCA, helicopter landings by the general public are prohibited in all federal wilderness. However, helicopter landings are permitted on a discretionary basis by the federal land management agencies for emergency situations. All public lands in Alaska allow helicopters to land for that purpose.

I strongly support allowing helicopters in wilderness areas to rescue injured or lost visitors. And those uses are already allowed. However, I have concerns about allowing helicopter landings in wilderness for other than emergency reasons, for purely recreational purposes.

In my home state of Wisconsin, people love the wilderness areas they visit such as the Boundary Waters Canoe Area Wilderness and the wilderness areas in the Nicolet and Chequamegon National Forests. The reason they love those places, Mr. President, is not only because they are among the most beautiful spots in the Upper Midwest, but also precisely because they are remote and are challenging to reach. National Parks are beautiful places. I support them, and I visit them with my family. However, National Parks, which have roads and restaurants and maintained campsites, are not the same as the lands protected under the Wilderness Act. National Parks are maintained for public access, wilderness areas by contrast, are areas where one can bring one's canoe and tent and hike in, or fly to in a float plane, as permitted today

under ANILCA. By these means of transportation visitors can enter wilderness areas in a relatively low impact manner.

Allowing helicopters into wilderness areas would mean managing lands, that according to the Wilderness Act are supposed to remain undisturbed by human access, in a contradictory manner. Imagine being in a remote spot surrounded by nature on a nice getaway and having a helicopter land right next to you to drop people off for an afternoon of wandering around? I believe we should not sacrifice the very reasons we have protected wilderness in an effort to increase access to the wilderness. If it's easy to get to, it's not a wilderness.

Second, Congress and federal land management agencies have already considered the issue of helicopter use on wilderness lands in Alaska and have found it to be inappropriate and incompatible. The Forest Service has explicitly considered and rejected helicopters in Alaska's wilderness. In 1997, the Forest Service completed an EIS specifically addressing helicopter landings in more limited circumstances than the language in this bill. At that time, the proposal was to allow helicopters in areas other than specifically designated wildlife, cultural resource, and research areas. Section 342 would allow helicopters in all areas.

The legislative history of ANILCA also specifically excluded helicopters from lands designated under that Act. The Senate Energy Committee considered special access to lands subject to ANILCA, and the Committee Report stated ''the transportation modes covered by this section are float and ski planes, snowmachines, motor boats, and dogsleds.''

Congress has already considered this issue, Mr. President, and we have found that helicopters for general public access do not have a place in Alaska's wilderness areas. I would urge that we not go back on this sound judgment. I yield the floor.

AMTRAK

Mr. MCCAIN. Mr. President, I am very concerned over this bill's proposal concerning Amtrak's funding and will offer an amendment to ensure the proposed scheme does not jeopardize the integrity of the Amtrak Reform and Accountability Act, P.L. 105–134, enacted on December 2, 1997.

Congress worked for a number of years in a bipartisan manner and each side accepted compromises in order to provide Amtrak with the statutory reforms it said it needed to allow it a real chance to meet its financial goals. The reform bill was based on both Amtrak's Strategic Business Plan, a plan charting Amtrak's financial operating and capital needs, and its federal grant request. And of course, its ultimate approval was the key to releasing the $2.2 billion ''tax credit'' for capital investment.

As my colleagues well know, I am not a proponent of a system that was intended to be privatized two years after it was created in 1971, but instead today has racked up more than $21 billion in taxpayer support even though it serves less than one percent of the traveling public. However, I worked in good faith with my colleagues and compromised to enable enactment of a legitimate reform bill.

I have been standing by the deal I cut. I have done nothing to hinder Amtrak nor have I offered proposals to prevent it from having the opportunity to fulfill its goals. But am I the only one who believes a deal is a deal?

Mr. President, I am sick and tired of the Administration and Amtrak seeking to change the agreement which is law.

First the law required the establishment of an 11-member Amtrak Reform Council (ARC) comprised of individuals appointed by the House, Senate, and the President. The ARC is responsible for evaluating Amtrak's performance and make recommendations to Amtrak for further cost containment, productivity improvements, and financial reforms. The ARC is required to submit annual reports to Congress and it is responsible for determining if Amtrak is meeting its financial goals.

While the House and Senate fulfilled its duties to appoint its members, the President has yet to make all of his appointments. As such, Senator LOTT, myself, and Congressman SHUSTER encouraged the appointed members to meet and begin carrying out its duties.

It seems the Administration thought they could hold up the ARC from doing its work if it dragged its feet long enough but that is not the case. In fact, the Department of Transportation even resisted fulfilling its administrative duties associated with the ARC in an attempt to hinder the ARC. But the ARC members have not let DOT hold them back and they have begun a steady meeting schedule.

Next the law called for a new Reform Board to replace the Amtrak Board of Directors serving at the time of enactment. Since we expect Amtrak to try to reinvent itself and to operate like a real business, we included a provision to allow a new leadership to guide Amtrak and instill a ''new culture'' among Amtrak employees and management.

Mr. President, several provisions concerning the establishment of the new Board were included in the reform bill in an attempt to prompt timely action by the Administration and Congress. Unfortunately, the spirit of these provisions was met with little regard.

The law required the new Board to be in place by March 31, 1998. Yet, the Senate did not receive even a single nomination from the President until the eve of the Memorial Day Recess. Due to concerns that the Administration may drag its feet indefinitely, Amtrak's authorization was linked to the nomination and confirmation of a new Board. Specifically, the law provides that if the new Reform Board has not assumed the responsibilities of the Amtrak Board of Directors before July 1st, Amtrak's authorization would lapse. The law also automatically discharged pending Board nominations from the Senate Commerce Committee if the Committee had failed to act by June 1st.

Presidential nominations require Senate confirmation, with hearings and review by the appropriate Senate Committees accompanying nominations. Yet due to the lack of timely action by the Administration, the Commerce Committee had no opportunity to carry out its duties prior to the statutory automatic June 1st discharge. It is my view the Administration's timing was a direct attempt to circumvent the Commerce Committee's authority in this regard.

Mr. President, my position regarding the new Board was made clear from day one. I repeatedly voiced my concerns to the Administration each time I heard rumors of its plans to reappoint current members. I was very clear that the Commerce Committee would not report favorably any Board hold-overs and I remained firm on that position. I truly believed even the Administration would acknowledge we didn't create a new Board only to reappoint the same members.

So what happened? The Administration sent up the nominations as Congress headed into a recess. Two of the six nominations needing confirmation were Board holdovers—that is, one-third. As I have said before, the Administration must have known that the Commerce Committee would be unable to fulfill its hearings and review prior to the statutory discharge date, given the Administration's stealth nomination submission.

However, in an effort to ensure Amtrak's authorization remained intact, I again worked in good faith with the Majority Leader and others to confirm some of the nominations in order to meet the deadline. The Commerce Committee now has an opportunity to consider whether the pending Board nominees should be approved and sent to the full Senate for a vote.

The law further provides for Amtrak to be free of operating subsidies within five years. If the ARC determines Amtrak is not meeting its fiscal goals, the ARC is to develop a plan for an alternative system. At the same time, Amtrak is to develop a plan for its liquidation. If at such time this occurs, the Congress will then need to approve a restructuring plan, or the liquidation proceeds.

As I've mentioned, the sunset trigger is contingent upon Amtrak meeting its fiscal goals and being free of operating subsidies by fiscal year 2002. Yet the Administration is again attempting to get around the law. And this time, the Appropriators are helping. .

The Appropriation bill proposes to permit Amtrak to pay for its operating expenses with its capital funds. I am told this proposal is strictly due to budgetary scoring concerns. However, I am not sold.

With the stroke of a pen, this bill jeopardizes the integrity of the reform bill—specifically the sunset trigger. Amtrak's proponents could just waive this bill as a demonstration that Amtrak is free of operating subsidies, since the bill does not include a line item for operating expenses as historically has been the case.

As I see it, Amtrak and the Administration are simply attempting to shift operating expenses into its capital budget, thereby backing away from agreements reached last year during the hard-fought reauthorization process. While the reauthorization placed a cap on the amount of money that may be appropriated in any one year for operational expenses or capital investments, the authorized levels were based on Amtrak's own projected financial needs.

Mr. President, during the last days of negotiations on the reform legislation, you may recall certain members of the Amtrak Board of Directors negotiated a new labor agreement which raised salaries for union employees, thereby incurring a substantial increase in its operational costs. Amtrak's projected net loss for FY 1998 is greater than the previous year's in part due to the Board's own actions. Yet, the Board assured us at the time that the labor agreement would require no action by Congress—nor more importantly, would the labor agreement place any additional obligations on the American taxpayers. However, shifting labor costs into the ''capital'' account could clearly result in the taxpayers once again being forced to cover expenses due to Amtrak's poor management decisions.

We authorized Amtrak at funding levels based on its own projected needs. Further, we directed an independent financial assessment of Amtrak be carried out under the direction of the Inspector General of the Department of Transportation. That audit will be based in part on Amtrak's Strategic Business Plan, including its projected operating and capital costs. Should Amtrak be permitted to significantly change the way it accounts for operating and capital expenses, an accurate accounting could be next to impossible. The proposed change in the use of capital funds raises legitimate concerns whether Amtrak and the Administration may be attempting to keep Amtrak's financial situation and Strategic Business Plan projections a moving target.

Further, we have continually been told Amtrak has critical capital investment needs. Yet, I am told that more than $500 million of the $621 million for capital would likely go to cover labor and other operational costs under this latest proposed scheme. If Amtrak is permitted to shift capital funds to cover what traditionally have been considered operating costs, how will Amtrak make up for the corresponding loss in funding for its capital improvements? Time and again we have been told Amtrak faces critical infrastructure investment needs which must be met if Amtrak is to have any chance of becoming a viable operation. Time and again we have been told Amtrak needed a dedicated source of capital. As I see it, the change has the very real potential for jeopardizing Amtrak's abilities to meet its capital needs which it has sought so long to accomplish.

Therefore, the amendment I will offer is intended to retain some semblance of legitimacy to P.L. 105–134.

BUS FUNDING FOR NORTHERN NEW MEXICO PARK AND RIDE

Mr. BINGAMAN. I know the Chairman and Ranking Member are aware of the proposal in the state of New Mexico to start up a new park and ride transit system that would serve the cities of Los Alamos, Pojoaque, Española, and Santa Fe. I first brought this exciting proposal to the senators' attention last September. Is the Chairman also aware that last August the State of New Mexico ran a two-week trial run of the proposed transit system and that the demonstration was an enormous success, with over 1500 riders per day and an estimated reduction of 750 vehicles?

Mr. SHELBY. Yes, Senator, I am aware of the success of the state of New Mexico's initial two-week demonstration of the Northern New Mexico Park and Ride.

Mr. BINGAMAN. I know the Senators are aware that, at my request, last year the subcommittee provided $1.5 million to the state to begin full-time transit service in Northern New Mexico this fall using leased buses and borrowed facilities. Is the Ranking Member also aware that the commitment of the local governments to the program has also been demonstrated by individual contributions of $100,000 each from the City of Santa Fe, Santa Fe County, Los Alamos County, and the Los Alamos National Laboratory?

Mr. LAUTENBERG. Yes, Senator BINGAMAN, I am aware of the funding commitments from the local governments and Los Alamos Lab for the Northern New Mexico Park and Ride.

Mr. BINGAMAN. Is my understanding correct that for fiscal year 1999 the Transportation Appropriations Subcommittee did not identify individual programs and funding amounts for discretionary grants for bus and bus facilities, but that the conference with the other body may present an opportunity to identify individual projects and funding amounts? If that is indeed the case, can the citizens of Northern New Mexico count on the Senators' efforts to identify $10 million to purchase the needed buses and bus facilities to allow the Park and Ride program to continue beyond the first year?

Mr. SHELBY. The Senator can be assured we will give the project our full consideration in the conference.

Mr. LAUTENBERG. I appreciate knowing of the Senator from New Mexico's interest in the Northern new Mexico Park and Ride.

Mr. BINGAMAN. I thank the Senators for their consideration.

CONSTRUCTION OF THE NEW CASTLE COUNTY AIRPORT CONTROL TOWER

Mr. BIDEN. Mr. President, I rise this evening on behalf of myself and my distinguished colleague from Delaware, Senator BILL ROTH, to note the importance of a project at the New Castle County Airport in Delaware that involves the Federal Aviation Administration, and to ask the help of the managers of this bill.

In an extraordinary—and what is believed to be the first-of-its-kind offer—the owners of the New Castle County Airport—a bi-state compact known as the Delaware River and Bay Authority—has agreed to pay the approximately $5 million it will cost to construct and equip a new control tower. This facility will replace the 43-year old existing tower which does not meet federally-mandated safety and environmental standards.

The FAA, however, has now taken the position that not only should the Delaware River and Bay Authority finance the cost to design and construct a new control tower, but also pay $2.3 million for the FAA's overhead, equipment and administrative costs to oversee the project.

In addition, the FAA wants the sponsor to reimburse the agency $1 million for costs related to the relocation of the FAA's Very High Frequency radar system (VOR) at the Airport—even though the FAA's current lease indicates the FAA should bear such costs.

With the Airport sponsor willing to finance the significant cost of constructing a new control tower for the FAA, the agency should not impose additional overhead costs on that sponsor.

The owners of the Airport have worked diligently and cooperatively with the FAA for the past three years on this project, but continue to encounter further financial demands and bureaucratic delays.

Clearly, this new control tower will help the FAA. Not only will the FAA get a new, state-of-the-art tower at no cost, if the New Castle County Airport is able to expand, it will help the FAA solve the growing problem of air traffic congestion at major commercial airports in Philadelphia, Baltimore and New York.

We believe it is in the best safety interests of all parties—the FAA, the Delaware River and Bay Authority, and most importantly the flying public—that this critical airport in Delaware be allowed to construct a new control tower facility for the FAA, without additional financial demands and delays.

It's our understanding that the House Appropriations Committee Report accompanying the FY'99 Transportation Appropriations bill specifically directs the FAA to assume the approximate $3.3 million in overhead costs. I rise today to bring this important issue to the attention of the Chairman and

Ranking Member and to seek your help in working to include this House language in the Conference Report.

Mr. SHELBY. Yes, we appreciate the concerns raised by the Senators from Delaware. We agree with the House Report language and want to assure you that we will work with you to ensure that these additional overhead costs are not imposed on the airport sponsor willing to construct the new control tower.

Mr. BIDEN. I thank the Senator, and I yield the floor.

Mr. DEWINE. Mr. President, I would like to take a moment to commend the Chairman of the Appropriations Subcommittee on Transportation, Senator SHELBY, for the work he has done on this bill. It is not easy to balance the competing interests in any appropriations bill, but I think it is even more difficult on transportation appropriations. I would also like to call attention to one area of the Senate's bill which is very different than the House version.

The Federal Automated Surface Observing System (ASOS) Program, which began in the late 1980's, is sponsored by the Federal Aviation Administration (FAA), the National Weather Service (NWS), and the Department of Defense (DoD) and currently includes over 860 ASOS units. For its part, as of December 2, 1997, the FAA had procured 569 ASOS units. Yet only 297 of these units had been commissioned as of June 16, 1998.

The current Senate bill provides $20.97 million for the Automated Surface Observing System (ASOS). This amount is $11 million more than the Administration request. According to the Committee report, $9.9 million is to be used to commission systems that have already been purchased. This only makes sense. After all, the Federal government purchased these systems. They might as well be used.

Last year, Congress appropriated $10 million more than the Administration request to procure nearly 30 more ASOS units. If the past is an accurate indicator, these units will sit idle until FAA finds the funds to commission them. In essence, what we are doing is purchasing technology with great potential but fraught with high maintenance costs and are going to be unusable for a number of years when, it is my understanding that there are other alternatives that cost less and can be used immediately. In fact, I understand that one of these alternatives, the Automated Weather Observing System (AWOS) is very popular in many states, including the Chairman's home state of Alabama.

I would draw my colleague's attention to the action taken yesterday by the House Committee on Appropriations. In its companion to the bill before us, that panel declined to fund any of these systems for the coming fiscal year but noted the Senate Committee's action. The House report language says that both systems (AWOS and ASOS) are ''meritorious'' and takes the strong position that if additional funding beyond the Administration's request is provided in the final conference action, that ''an equitable distribution'' of the additional funding should be provided for both systems.

I strongly support the action taken by our House colleagues and urge my good friend, the Chairman of the Subcommittee to join me to inject fairness, cost-effectiveness and competition into this program.

Mr. SHELBY. I thank the Senator from Ohio for his statement. I have listened with interest to his remarks and recognize his concerns. The Senator from Ohio has raised very compelling arguments and I will carefully consider his request during the conference committee's deliberations.

Mr. KOHL. I would like to engage Senator SHELBY in a colloquy with respect to an issue of importance to my State of Wisconsin and the entire Midwest Region. As you may know, Wisconsin and eight other Midwestern states, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska and Ohio, working with Amtrak, have undertaken planning studies of a Midwest regional rail system to be hubbed in Chicago. The regional rail system would provide modern service on all existing rail corridors as well as several new corridors within the nine-state region. By connecting major Midwestern metropolitan areas, ridership and revenue projections have revealed that the rail network would operate without subsidy, enhance regional economic development and increase mobility in corridors with congested highway systems. To date, the states and Amtrak have contributed $468,500. The Federal Railroad Administration has also contributed $200,000 to this endeavor. I understand that the Committee grappled with unique constraints this year due to the firewalls created by the Transportation Equity Act, the so-called TEA–21. Implementation planning funds are needed, however, to move this important project forward. For this reason, I do hope that I can count on your assistance if additional resources become available in conference and as this process moves forward.

Mr. SHELBY. I know this initiative was of interest to the senior Senator from Wisconsin and that you had requested funds so that your State and the other Midwestern states could complete detailed implementation planning. As you know, we were unable to fund high speed rail corridor planning studies in the Senate Transportation Appropriations bill due to budget constraints. However, I will work with you and if we revisit this issue in conference and take another look at corridor planning studies, I assure you that the Midwest Rail initiative will receive every consideration.

Mr. HOLLINGS. Mr. President, I rise to briefly discuss a provision in this legislation which I was pleased to sponsor. The interstate network of railroads faces several problems. As you are aware, several areas in the United States currently experience serious rail freight congestion. We frequently hear of delays on the delivery of goods for two to three weeks because of rail congestion. With more train traffic, there has also been an increase in rail related accidents. There is no comprehensive system which manages the interface between trains and cars at the huge number of highway crossings in the United States. In South Carolina alone, there are 32,000 crossings. This situation is compounded in many parts of the country. Congestion is worsened and safety is jeopardized because passenger trains, high-speed trains, and freight trains all use the same track.

Unlike the national tracking of air traffic that assures millions of safe passenger air miles each year, comprehensive automated management and control of movement and location in the rail industry does not exist. The Transportation Safety Research Alliance, a non-profit public/private partnership which includes industry and research institutions, is seeking to develop an advanced, integrated technology system that would provide direction, movement, and highway crossing control for the rail freight industry. Without such a system, we are going to experience more accidents endangering the public safety and more delays to shippers and consumers that harm the Nation's commerce. This bill includes language directing the Federal Railroad Administration to provide $500,000 towards the development of this project. I want to thank the Subcommittee Chairman, Senator SHELBY, and the Ranking Member, Senator LAUTENBERG, for including this language. I appreciate your leadership in the Conference to ensure that this provision is included in the Conference Report.

Mr. SANTORUM. I also wish to express my support for this provision. One of the key industry members of the Transportation Safety Alliance, Union Switch and Signal, is headquartered in Pittsburgh, Pennsylvania. They manufacture signaling automation and control systems for railroads, and are at the cutting edge of an industry which can help our country achieve greater rail safety in the 21st century.

Senator LAUTENBERG. The issue of rail safety in this country is of great importance to me. I appreciate your comments, and will work to keep this provision in the Conference Report.

ADVANCED CIVIL SPEED ENFORCEMENT SYSTEMS UPGRADE

Mr. BIDEN. Mr. President, I say to my good friend and colleague, the distinguished Chairman of the Finance Committee, that I note with interest that the report on the bill before us provides funds in the amount of $1 million for the upgrade of safety systems on all locomotives operating between New Haven, CT, and Boston, MA.

Mr. LAUTENBERG. That is correct.

Mr. ROTH. We have a question for the distinguished Ranking Member of the Transportation Appropriations Subcommittee. Is it the intent of this legislation that installation of the advanced civil enforcement systems be performed at the facility that has the expertise, capability, and prior experience to assemble and test cab signal equipment?

Mr. BIDEN. These new speed monitoring systems are important to the operation of the Northeast Corridor and we want to ensure that the installation is done at a facility where the workers have the skills and experience to do the job right.

Mr. LAUTENBERG. That is our intent; that is the facility that should do the job.

PORTLAND LIGHT RAIL FUNDING

Mr. WYDEN. Mr. President, I would like to engage the Chairman and Ranking Member of the Transportation Appropriations Subcommittee in a colloquy to clarify the funding provided for Portland Light Rail. The Committee Report on the Transportation Appropriations Bill has a single line item for the Portland Westside and South-North Light Rail projects. However, the Committee report description is ambiguous as to how the funding provided may be used. The description reads:

Portland Westside and south-north LRT projects.—The Committee recommends $26,700,000 for the Portland Westside LRT project. . . .

The report then goes on to describe both projects. It is the Committee's intention to provide this funding for both the Westside and south-north project?

Mr. SHELBY. Yes. The Committee intends the funding to be available for both projects.

Mr. WYDEN. I thank the Chairman for this clarification. I would also ask whether the Committee intends to allow the $26.7 million amount provided for Portland light rail to be utilized either for completion of the Westside project or final design and right-of-way acquisition for the south-north project?

Mr. LAUTENBERG. Yes. The Committee intends this funding to be available for either of these purposes.

Mr. WYDEN. I thank the distinguished Chairman and Ranking Member for their assistance in providing funding for both of these important transit projects.

CHEHALIS I–5 FLOOD CONTROL PROJECT

Mr. GORTON. Mr. Chairman, I would like to bring to your attention a project that is of utmost importance to Southwest Washington state, the Chehalis I–5 Flood Control Project. You were gracious enough to include $250,000 for this project in the manager's amendment in full committee, and I would like to thank you for your attention to this matter. Unfortunately, this project, which will ultimately cost taxpayers $18 million less than the initial option proposed by the Washington State Department of Transportation, will require $2.5 million in FY 1999 to wade through the myriad of permits that must be completed before this project can move forward. I would like to work with you in conference to ensure that this project has the Federal support to become a reality.

Mr. SHELBY. I appreciate your bringing this matter to my attention. I look forward to working with you in conference to ensure that an innovative project such as the Chehalis I–5 Flood Control Project receives the federal commitment that it deserves.

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

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

AMENDMENT NO. 3327

(Purpose: To provide additional resources for the United States Coast Guard for drug interdiction efforts)

Mr. DEWINE. Mr. President, I have an amendment I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE], for himself, Mr. COVERDELL, Mr. GRAHAM, Mr. BOND, Mr. GRASSLEY and Mr. FAIRCLOTH, proposes an amendment numbered 3327.

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

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

The amendment is as follows:

Beginning on page 8 of the bill, in line 17 after the colon insert: *Provided further,* That not less than $2,000,000 shall be available to support restoration of enhanced counter-narcotics operations around the island of Hispaniola.

On page 5 of the bill, in line 4, strike ''$165,215,000'' and insert ''$158,468,000'';

On page 9 of the bill, in line 2, strike $388,693,000'' and insert ''$426,173,000'';

On page 9 of the bill, in line 4, strike $215,473,000'' and insert ''$234,553,000'';

On page 9 of the bill, in line 7, strike ''$46,131,000'' and insert ''$55,131,000'';

On page 9 of the bill, in line 9 strike ''$35,389,000'' and insert ''$44,789,000'';

On page 77 of the bill, in line 15, strike ''$10,500,000'' and insert ''$17,247,000''.

Mr. DEWINE. Mr. President, yesterday 15 of my colleagues and I introduced the Western Hemisphere Drug Elimination Act, legislation that would restore balance to our comprehensive antidrug strategy. My friend from Florida, Congressman BILL MCCOLLUM, is leading a similar effort in the House of Representatives.

This legislation is a $2.6 billion effort—$2.6 billion over the next 3 years. This is an outline. It is a blueprint to really restore balance to our antidrug effort. Unfortunately, over the years, the effort that we are putting in in regard to interdiction has gone down significantly as a percentage of our total budget. And we need to restore that balance.

This legislation is a $2.6 billion, 3-year investment to reduce the amount of drugs coming into this country and to drive up the cost of drug trafficking. Taken together, this strategy will drive up the price of drugs and, most importantly, then drive down the incidence of the use of drugs in our country. This is an important investment in the future of America and the future of our children.

Today, one day later, after having introduced this bill, the Senate will, I hope, take the first step towards realizing that investment. I am pleased to have just sent to the desk an amendment offered along with Senator COVERDELL, Senator GRAHAM of Florida, Senator BOND, and Senator GRASSLEY, an amendment that will provide much needed resources for the U.S. Coast Guard, resources that will increase their drug interdiction capability.

Specifically, Mr. President, our amendment would accomplish two goals. One, it would increase the funds available for equipment devoted to drug interdiction by approximately $37.5 million. Second, the amendment would set aside resources needed to restore a much needed drug interdiction operation in the Caribbean.

Mr. President, I see the distinguished chairman of the Transportation Subcommittee, Senator SHELBY, on the floor. I would like to engage in a colloquy with him to go over the particulars of the bipartisan amendment that I have offered.

First, I would like, before I do that, to discuss the $37.5 million secured for additional resources.

Specifically, Mr. President, with respect to sea-based resources, our amendment would enable the Coast Guard to reactivate one T–AGOS vessel and acquire two additional T–AGOS vessels. These vessels, originally Navy submarine hunters, have proved to be quite valuable for counterdrug operations because they have the room needed for command and control equipment, such as sensors and communications equipment.

In addition, the amendment also would enable the Coast Guard to acquire a maritime interdiction patrol boat and satellite communications equipment for patrol boats.

With respect to Coast Guard air operations, our amendment would allow for the reactivation of three maritime control aircraft. These are jet aircraft that would be used by the Coast Guard to track and pursue drug traffickers.

Finally, our amendment would allow for the acquisition of forward-looking infrared systems. This technology enables the Coast Guard to track heat signatures in the water.

Why is this important? Well, drug traffickers, drug runners in the Caribbean, use what we call, and they call, ''go-fast'' boats, boats that are too fast for detection in tracking using conventional radar. The infrared systems can

detect ''go-fast'' boats and thus allow for more effective aerial surveillance.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I appreciate the effort of the Senator from Ohio, first, in offering this very important amendment and, second, in briefly tonight explaining to the Senate the kinds of resources that are to be acquired with the additional assistance he has been talking about. I also commend him for his diligence in seeking additional funds for the Coast Guard dealing with interdiction.

Mr. DEWINE. I thank my friend from Alabama very much for his very kind words and for his leadership in assisting with this amendment.

There is one additional component, Mr. President, of this amendment that I would like to discuss briefly this evening, and that is the set-aside that will enable the Coast Guard to restore a very effective drug interdiction program in the Caribbean.

My interest in drug interdiction activities in the Caribbean stems, in part, from my interest in the island nation of Haiti. The hard reality is that the Caribbean—from Haiti to the Bahamas—is fast becoming once again a major illegal drug transit route.

On one of my recent trips, Mr. President, I saw that, in particular, Haiti is becoming an attractive rest-stop on the cocaine highway. It is strategically located about halfway between the source country, Colombia, and the destination country, the United States. Haiti law enforcement, though slowly getting better, is, at this point, utterly unequipped, unprepared to put a dent in this drug trade.

What is more, the Coast Guard fleet consists of a handful of boats. They are making progress. They have certainly a long way to go. As the poorest country in the hemisphere, Haiti is extremely vulnerable to the kind of bribery and corruption that the drug trade needs in order to flourish. Not surprisingly, the level of drugs moving now through Haiti has dramatically increased.

According to a U.S. Government interagency assessment on cocaine movement, in 1996 between 5 and 8 percent of the cocaine coming into the United States passed through Haiti. By the third quarter of 1997, the percentage jumped to 12 percent, and increased yet again to 19 percent by the end of that year.

Accordingly, we responded to this crisis with an interdiction strategy called Operation Frontier Lance—Operation Frontier Lance—which utilized Coast Guard cutters, speedboats, and helicopters, all to detect and capture drug dealers on a 24-hour-per-day basis.

Incidentally, this operation was modeled after another successful interdiction effort that took place off the coast of Puerto Rico called Operation Frontier Shield.

Mr. President, last May I boarded the U.S. Coast Guard Cutter Dallas and observed Operation Frontier Lance and observed the men and women who are on the front line—and were on the front line—carrying out our antidrug operation. And I came away thinking that this is the kind of effort, the kind of coordination of resources, that we need not just off the coast of Haiti and the Dominican Republic but also throughout the drug trafficking routes throughout the entire Caribbean.

Mr. President, unfortunately—unfortunately—funding for Frontier Lance ran out last month. This once effective roadblock on the cocaine highway is no more. With our amendment, we can get that operation and/or similar operations in the region back up and running.

Specifically, our amendment secures operations funding that will allow Operation Frontier Lance or similar operations to resume. And with the additional resources I described earlier, the Coast Guard has an even greater ability to flex its drug interdiction muscle in the entire region.

Mr. President, I express my thanks again to the chairman and the ranking member of the Transportation Subcommittee, Senator SHELBY and Senator LAUTENBERG, for their very effective efforts to assist me and the distinguished list of cosponsors of this amendment. I also send my thanks to the staff of the subcommittee for their effort. Their effort was great and it was first rate. This would not have happened without them.

As I said at the beginning of my statement, Mr. President, this amendment today is a first step. I expect that there will be many more steps in the future, steps that are needed if we are going to restore a truly balanced, truly effective drug control strategy.

This amendment represents a bipartisan effort to make a targeted and very specific investment, an investment in stopping drugs before—before—they reach America. It will take similar efforts over the course of the next 3 years to bring our drug strategy back into balance and, most important, back on the course of reducing drug use in our homes, our schools, and our communities.

I thank the Chair and yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, the Senator from Ohio presents, I think, very effectively the case for continuing the efforts that we have had in the past—some quite successful—to intercept the drug trafficking, and to make sure that we do not let down our guard, and to maintain the facilities and personnel that we need to do it.

The thing I am concerned about—and I commend the Senator from Ohio for bringing this to our attention; we will be looking at this over the next period of time—the offset for this amendment, if I am not mistaken, is proposed to come out of the administrative costs at DOT; am I correct in that?

Mr. DEWINE. That is correct.

Mr. LAUTENBERG. That account has been severly tested. We will look closely to see if we can put together the package that the Senator from Ohio is recommending.

I do send up a note of caution as we look at it. We have been warned that we could face a RIF, reduction in force, at DOT at the levels currently in the bill for administrative expenses.

The chairman and I have been very careful to try to make sure that the dollars we expend are those that are most effective in providing transportation facilities, helping the Coast Guard, helping FAA, and we have been all along trying to reduce the administrative side, the travel side, all of those things. We are both staunch supporters of the Coast Guard with our coastal States and in deep appreciation for what the Coast Guard has done.

The drug interdiction mission I talked about earlier today, and I am prepared on this side to accept the DeWine-Graham amendment, but I have to know that the chairman and I are going to take a fresh look at DOT's administrative costs in conference.

Mr. SHELBY. Mr. President, I want to state to my colleagues tonight that I believe myself, as I said earlier, that what Senator DEWINE is offering to do makes a lot of sense. I will work with Senator DEWINE and Senator LAUTENBERG in the conference when we get into the seriousness of what we can do with money. Interdiction here dealing with drugs should be and will be one of our No. 1 priorities.

Mr. DEWINE. Mr. President, let me thank both of my colleagues, the ranking member and the chairman, for their great cooperation. I understand my colleague has expressed his concerns about the money situation. I look forward to working with both Members in regard to that.

I appreciate your concern for the Coast Guard. I believe this is money very well spent. I think the Coast Guard knows what to do with its money. They know how to get the job done. I have been out literally in the field or on the sea with them to see what they can do. They do a good job getting it done.

I understand the concerns with regard to the money.

I don't know if there is any further debate.

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

The amendment (No. 3327) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 3328 AND 3329, EN BLOC

Mr. SHELBY. Mr. President, I have two amendments, one on behalf of Senator MCCAIN, and one on behalf of Senator SPECTER. It is my understanding

they have been cleared. I send them to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SHELBY] proposes amendments en bloc numbered 3328 and 3329.

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

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

The amendments en bloc are as follows:

AMENDMENT NO. 3328

(Purpose: To ensure that the policies and goals of the Amtrak Reform and Accountability Act of 1997 will be met, and for other purposes)

At the appropriate place insert:

SEC. . The change in definition for Amtrak capital expenses shall not affect the legal characteristics of capital and operating expenditures for purposes of Amtrak's requirement to eliminate the use of appropriated funds for operating expenses according to P.L. 105–134; No funds appropriated for Amtrak in this Act shall be used to pay for any wage, salary, or benefit increases that are a result of any agreement entered into after October 1, 1997; *Provided further,* That nothing in this Act shall affect Amtrak's legal requirements to maintain its current system of accounting under Generally Accepted Accounting Principles; *Provided further,* That no later than 30 days after the end of each quarter beginning with the first quarter in fiscal year 1999, Amtrak shall submit to the Amtrak Reform Council and the Senate Committee on Appropriations, and the Senate Committee on Commerce, Science, and Transportation, a reporting of specific expenditures for preventative maintenance, labor, and other operating expenses from amounts made available under this Act, and Amtrak's estimate of the amounts expected to be expended for such expenses for the remainder of the fiscal year.

AMENDMENT NO. 3329

(Purpose: To clarify Delaware River Port Authority to toll collection authority)

At the appropriate place in the bill, insert the following:

SEC. . Section 3 of the Act of July 17, 1952 (66 Stat. 746, chapter 921), and section 3 of the act of July 17, 1952 (66 Stat. 571, chapter 922), are each amended in the proviso—

(1) by striking ''That'' and all that follows through ''the collection of'' and inserting ''That the commission may collect'' ; and

(2) by striking ',shall cease'' and all that follows through the period at the end and inserting a period.

Mr. SHELBY. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

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

Mr. LAUTENBERG. We agree to the amendments.

Mr. SHELBY. The amendments have been cleared on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 3328 and 3329) were agreed to.

Mr. SHELBY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

DELAWARE RIVER, PENNSYLVANIA ITS DEPLOYMENT PROJECT

Mr. SPECTER. Mr. President, I have sought recognition to comment on the inclusion in the bill of $4 million at my request for the deployment of an intelligent transportation system project across the Delaware River. I sought these funds at the request of the Delaware River Port Authority, which is implementing electronic toll and traffic management systems for the Ben Franklin, Walt Whitman, Commodore Barry, and Betsy Ross Bridges in the Pennsylvania-New Jersey-Delaware region, which are operated and maintained by the Authority and serve thousands of drivers each day, including substantial commercial traffic.

I believe that it is critical that we do all that is possible to alleviate traffic congestion on these important river crossings, for the sake of improving the quality of life of area residents and others who drive on the bridges and to reduce air pollution in Philadelphia and its suburbs.

I thank the Chairman for including funds for deployment of an ITS system over the Delaware River, which will benefit both Pennsylvania and New Jersey.

Mr. SHELBY. I am familiar with the Delaware River project discussed by my colleague from Pennsylvania and would note that the Delaware River Port Authority project is particularly well-suited for consideration by the Federal Highway Administration for funding under this legislation.

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

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

AMENDMENTS NOS. 3330 THROUGH 3335 AND 3323, AS MODIFIED, EN BLOC

Mr. SHELBY. Mr. President, on behalf of myself and Senator LAUTENBERG, I send—and I will name them—a number of amendments to the desk that have been agreed to.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Alabama [Mr. SHELBY] proposes amendments numbered 3330 through 3335 and 3323, as modified.

Mr. SHELBY. I ask unanimous consent that the Senate consider these amendments en bloc.

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

Mr. SHELBY. Among these amendments is an amendment on behalf of the Presiding Officer, Mr. FRIST, an amendment on behalf of Senator ABRAHAM, an amendment on behalf of Senator LEVIN, an amendment on behalf of Senators LAUTENBERG and KERRY of Massachusetts, an amendment on behalf of Senators BOND, KOHL and JOHNSON, an amendment on behalf of Senator DURBIN, and an amendment on behalf of Senator BURNS.

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

Mr. LAUTENBERG. No. We support the amendments and urge their adoption.

Mr. SHELBY. I urge the amendments be adopted en bloc.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

Without objection, the amendments are agreed to.

The amendments (Nos. 3330 through 3335 and 3323) were agreed to, en bloc, as follows:

AMENDMENT NO. 3330

On page 22 of the bill, in line 1, strike ''State of Michigan,'' and insert: ''Oakland County, MI,''.

On page 89 of the bill, in line 24, before the figure ''2,700,000'' insert the following: $200,000 is provided for the Southeast Michigan commuter rail viability study; $2,000,000 is provided for the major investment analysis of Honolulu transit alternatives;''.

On page 92 of the bill, after line 25, insert the following:

SEC. . Section 1212(m) of Public Law 105–178 is amended (1) in the subsection heading, by inserting '', Idaho and West Virginia'' after ''Minnesota''; and (2) by inserting ''or the States of Idaho or West Virginia'' after ''Minnesota''.

In amendment No. 3324, in line 10, strike ''determine the feasibility of providing reliable access connecting King Cove and Cold Bay, Alaska'' and insert the following: ''study rural access issues in Alaska''.

AMENDMENT NO. 3331

On page 30, after line 11, before the period insert the following: *Provided further;* That of the funds made available under Sec. 5308, up to $10 million may be used for the projects that include payments for the incremental costs of biodiesel fuels: *Provided further;* That such incremental costs shall be limited to the cost difference between the cost of alternative fuels and their petroleum-based alternatives.''

AMENDMENT NO. 3332

(Purpose: To prohibit smoking on scheduled domestic and foreign airline flight segments taking off from or landing in the United States)

At the appropriate place, insert the following:

SEC. . PROHIBITIONS AGAINST SMOKING ON SCHEDULED FLIGHTS.

(a) IN GENERAL.—Section 41706 of title 49, United States Code, is amended to read as follows:

''§ 41706. Prohibitions against smoking on scheduled flights

''(a) SMOKING PROHIBITION IN INTRASTATE AND INTERSTATE AIR TRANSPORTATION.—An individual may not smoke in an aircraft on a scheduled airline flight segment in interstate air transportation or intrastate air transportation.

''(b) SMOKING PROHIBITION IN FOREIGN AIR TRANSPORTATION.—The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit, on an after the 120th day following the date of the enactment of this section, smoking in any aircraft on a scheduled airline flight segment within the United States or between a place in the United States and a place outside the United States.

''(c) LIMITATION ON APPLICABILITY.—With respect to an aircraft operated by a foreign air carrier, the smoking prohibitions contained in subsections (a) and (b) shall apply only to the passenger cabin and lavatory of the aircraft. If a foreign government objects to the application of subsection (b) on the basis that it is an extraterritorial application of the laws of the United States, the Secretary is authorized to waive the application of subsection (b) to a foreign air carrier licensed by that foreign government. The Secretary of Transportation shall identify and enforce an alternative smoking prohibition in lieu of subsection (b) that has been negotiated by the Secretary and the objecting foreign government through a bilateral negotiation process.

''(d) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 60th day following the date of the enactment of this Act.

AMENDMENT NO. 3333

At the appropriate place, insert the following:

SEC. . HAZARDOUS MATERIALS.

In the case of a state that, as of the date of enactment of this Act, has in force and effect State hazardous material transportation laws that are inconsistent with federal hazardous material transportation laws with respect to intrastate transportation of agricultural production materials for transportation from agricultural retailer to farm, farm to farm, and from farm to agricultural retailer, within a 100-mile air radius, such inconsistent laws may remain in force and effect for fiscal year 1999 only.

AMENDMENT NO. 3334

On page 79 of the bill, in line 21 before the period, insert: ''*Provided further,* That the Secretary, acting through the Administrator of the Federal Aviation Administration, shall by January 1, 1999, take such actions as may be necessary to ensure that each air carrier (as that term is defined in section 40102 of title 49 U.S.C.) prominently displays on every passenger ticket sold by any means or mechanism a statement that reflects the national average per passenger general fund subsidy based on the fiscal year 1997 general fund appropriation from the Federal Government to the Federal Aviation Administration: *Provided further,* That the Secretary of Transportation, acting through the Administrator of the Federal Highway Administration, shall take such actions as may be necessary to ensure the placement of signs, on each Federal-aid highway (as that term is defined in section 101 of title 23, U.S.C.) that states that, during fiscal year 1997, the Federal Government provided a general fund appropriation at a level verified by the Department of Transportation, for the subsidy of State and local highway construction and maintenance.

AMENDMENT NO. 3335

(Purpose: To require the National Transportation Safety Board to reimburse the State of New York and local counties in New York for certain costs associated with the crash of TWA Flight 800)

At the appropriate place in title III, insert the following:

SEC. 3 . REIMBURSEMENT FOR SALARIES AND EXPENSES.

The National Transportation Safety Board shall reimburse the State of New York and local counties in New York during the period beginning on June 12, 1997, and ending on September 30, 1999, an aggregate amount equal to $6,059,000 for costs (including salaries and expenses) incurred in connection with the crash of TWA Flight 800.

AMENDMENT NO. 3323, AS MODIFIED

(Purpose: To require the Secretary of Transportation to ensure that there is sufficient signage directing visitors to cemeteries of the National Cemetery System, and for other purposes)

At the appropriate place in title III, insert the following:

SEC. 3 . SIGNAGE ON HIGHWAYS WITH RESPECT TO THE NATIONAL CEMETERY SYSTEM.

(a) DEFINITIONS.—In this section:

(1) FEDERAL-AID HIGHWAY.—The term ''Federal aid highway'' has the meaning given that term in section 101 of title 23, United States Code.

(2) NATIONAL CEMETERY SYSTEM.—The term ''National Cemetery System'' means the National Cemetery System, which is managed by the Secretary of Veterans Affairs.

(3) STATE.—The term ''State'' has the meaning given that term in section 101 of title 23, United States Code.

(b) FEDERAL-AID HIGHWAYS.—The Secretary of Transportation may encourage States to take such action as may be necessary to ensure that, for each cemetery of the National Cemetery System that is located in the proximity of any Federal-aid highway, there is sufficient and appropriate signage along that highway to direct visitors to that cemetery.

(c) STATE HIGHWAYS.—Nothing in subsection (b) is intended to affect the provision of signage by a State along a State highway to direct visitors to a cemetery of the National Cemetery System.

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

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

The motion to lay on the table was agreed to.

Mr. SHELBY. Mr. President, I know of no further amendments to the bill.

The PRESIDING OFFICER. If there are no further amendments, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. SHELBY. Mr. President, I ask unanimous consent that the yeas and nays be ordered on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. SHELBY. I ask unanimous consent that the vote occur on passage at 9:15 a.m. on Friday, and that paragraph 4 of rule XXII be waived.

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

Mr. SHELBY. In light of this agreement, there will be no further votes tonight. The next vote is scheduled for 9:15 a.m. Friday morning.

Mr. President, I ask unanimous consent that when the Senate completes action on S. 2307, the fiscal year 1999 transportation appropriations bill, that the bill not be engrossed and be held at the desk.

I further ask that when the Senate receives the House of Representatives companion measure, the Senate immediately proceed to its consideration; that all after the enacting clause be stricken and the text of S. 2307, as passed, be inserted in lieu thereof; that the House bill, as amended, be read for a third time and passed, the motion to reconsider the vote be laid upon the table, that the Senate insist on its amendments, request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint conferees on the part of the Senate, and that the foregoing occur without any intervening action or debate.

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

Mr. SHELBY. I further ask unanimous consent that when the Senate passes the House companion measure, as amended, the passage of S. 2307 be vitiated and the bill be indefinitely postponed.

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

MORNING BUSINESS

Mr. SHELBY. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

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

SENATOR TIM HUTCHINSON RECEIVES GOLDEN GAVEL AWARD

Mr. LOTT. Mr. President, yesterday, Senator HUTCHINSON presided his 100th hour of this Congress and, therefore, is the latest recipient of the Senate's Golden Gavel Award.

Senator HUTCHINSON and his scheduling staff have consistently adjusted their schedule to assist whenever presiding difficulties have occurred. For these honorable efforts and for the Senator's continued commitment to his presiding duties, we extend our thanks and congratulations.

CORRECTION OF THE RECORD

Mr. BYRD. Mr. President, in my speech of July 16, 1998, titled ''Anniversary of the Great Compromise,'' on page S. 8295, in the first column thereof, the word ''unilateral'' in the second line of the second full paragraph should be ''unicameral.'' ''Unicameral,'' instead of ''unilateral.''

I ask unanimous consent the permanent RECORD show the correction.

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

KIDS AND SEX

Mr. BYRD. Mr. President, I rise today to express my shock and utter amazement regarding the cover story in the June 15 issue of Time magazine. It is entitled ''Everything your kids already know about sex.''

Now, I know that any octogenarian like myself is going to be immediately viewed as a dinosaur and a prude on a