

"SEC. 703. EFFECTIVE DATE."

"This Act shall become effective one day after enactment."

Mr. MURKOWSKI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

VISIT TO THE SENATE BY THE HONORABLE HOSNI MUBARAK, PRESIDENT OF EGYPT

Mr. HELMS. Mr. President, I present to the Senate of the United States, the distinguished and honorable President of Egypt, Hosni Mubarak.

[Applause.]

RECESS

Mr. HELMS. Mr. President, I ask unanimous consent that the Senate stand in recess in honor of President Hosni Mubarak, so Members might meet our friend from Egypt.

There being no objection, the Senate, at 5:21 p.m., recessed until 5:25 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRIVILEGE OF THE FLOOR

Mr. HATFIELD. Mr. President, I ask unanimous consent that Dr. Jonelle Rowe, a fellow on Senator FRIST's staff, be granted floor privileges today, July 31, 1996, during the consideration of the fiscal year 1997 Transportation appropriations.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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 ACT, 1997

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 3675) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1997, and for other purposes.

The Senate resumed consideration of the bill.

Mr. DORGAN. Mr. President, I had given notice that I would offer one additional amendment. I say to the rank-

ing member and the manager that I will not offer that amendment, but I do want to speak for just a couple of minutes while we are waiting for another Senator to come to offer an amendment. I think that will probably be good news to them because they want to move the bill along, and they do not want me to offer another amendment.

I want to describe, as you are waiting for Senator BAUCUS and others, what I was going to offer the amendment on. I want Members of the Senate to understand that we are going to be dealing with this issue in a day or so.

Here is the issue. It is very simple. It is something most Senators have not heard of, but it is something that went on late last night here in the Senate in a deal between the Senate and the House, I am told. There is a bill that is traveling with the minimum wage that is called the Small Business Job Protection Act that gives some benefits to small business. Of course, it is not just benefits for small business. Included in that bill was a provision repealing something called section 956A of the Internal Revenue Code.

What is 956A? It is a provision of the law that was passed in 1993 to close a corporate tax loophole by which corporations move investments and U.S. jobs overseas, and avoid paying taxes here at home. In 1993, that loophole was closed by something that was proposed by President Clinton and supported by the Congress: 956A. It says that you cannot start a manufacturing plant overseas, earn a lot of money, and pay no taxes back home.

My point is that in 1993 a tax loophole was closed. It had benefited some of the largest corporations in the country. It said to them, if you move your investments and jobs overseas, we will give you a special tax break that is not available to small businesses operating in this country. And they moved their jobs overseas. They earn income overseas and pay no taxes in this country on income. They invest it in passive assets abroad in foreign countries, and pay no income tax here.

We closed that tax loophole. Guess what? There are some folks in this Chamber and the House that have been working late at night to reopen that loophole. I know it is only a few hundred million dollars, but it is a few hundred million dollars in favors to some of the largest corporations in this country.

I have worked for couple of years trying to get some money to deal with Indian child abuse—a million dollars, two million dollars. I have told my colleagues before that I have been in an office where there is a stack of papers that high on the floor of complaints of sexual abuse and violence against children that have not even been investigated because there is not enough money. We do not have enough money to do things like that. We are simply short of money.

But when it comes to late night in this place, in the conference, there is

enough money to give a \$235 million tax break to corporations and say, if you want a tax break to move your jobs overseas, we will sweeten it up; we will give you a big, juicy tax loophole.

That is going to be put in the bill in conference. I am told the deal was struck last night between the chairmen of the two committees working late last night.

I venture to say that there is not another Member of the Senate who knows about it, and it probably does not mean a lot to some. It will mean something to those people who are going to lose their jobs in this country because we make it juicier for corporations to move jobs overseas. We decide to give a huge tax break to firms which move jobs overseas. And it will mean that some people in this country are going to lose their good-paying jobs. It is going to mean that we are out several hundred million dollars because we now have a new tax break that we thought we had closed in 1993. It is going to mean that small businesses that operate in this country are going to be forced to compete with large multinational firms at a greater disadvantage.

This is coming to the Senate, and it is stuck in a bill called the Small Business Job Protection Act. It ought to be against the law to use a title like that when it includes provisions like this.

You are going to hear more from me if it is true that the conference has accepted this and is going to bring it to the floor of the Senate. I am told a deal was made last night.

I could name some large corporations on the floor—but I will not at this moment—that have been moving around this town saying, "Reopen, please, for us this tax loophole. We want to benefit from it. We want to move our jobs overseas. We want to invest our money overseas. Reopen this loophole."

We have folks jumping for joy to see if they cannot accommodate those who want another tax loophole done in the dead of night without the knowledge of people in this Chamber and the other Chamber. Most of them do not know much about 956A—and done with hundreds of millions of dollars at a time when we cannot get \$0.5 million or \$1 million to deal with critical issues of child abuse on Indian reservations. They cannot even get them investigated. But there is plenty of money to do this.

I will tell you, if I sound upset about this stuff, I am, because this sort of thing should not go on in this town. If you want to debate restoring a tax loophole, then let us debate it on the floor of the Senate. We repealed it 3 years ago. Now the folks want to go out and open it up again. Let us debate that on the floor of the Senate and see if you get one vote.

How many want to stand up in the Senate and say, "Yes, we would like to restore a new tax loophole. Count us in. We want to go home and brag about creating a new tax loophole which benefits some of the biggest corporations

in this country so they can move their jobs overseas".

I want to know one Senator who wants to go home and brag about that in August. I bet there is not one who would do it, not one who would want to vote on this, so you do not have to vote on it because it is done under cover of darkness, slipped in a bill that is called the Small Business Job Protection Act. You talk about mismanagement.

There is nothing about small business job protection in any of this. This is not job protection—shipping jobs overseas. It is not small business when you are talking about the biggest businesses in the country.

So I would say if tomorrow this conference report comes back to the floor of the Senate, you are going to hear a lot about this, and I am going to ask: Who is the person that said, "Count me in, count me in at a time when we are tightening our belts wanting to lead the charge to open up a new tax loophole. Sign me up for that"? I want to find the Member of the Senate or the House who says, "Yes, that is me. That is what I stand for," because I think this is an outrage.

I think that there are a lot of people who think they can do it simply because if they do it in conference, we do not get a chance to vote on it separately. Do you know something? It was not put in the Senate bill. They were going to put it in the Senate bill, but they did not do it because I think they knew I was going to force a vote on it. So they put it in the House bill and packaged up a rule so they do not have to vote on it.

The result is that nobody in conference who tries to push this sort of sweet deal—so that big business move jobs overseas—nobody has to vote on it. So they get the job done for their friends worth hundreds of millions of dollars and do not have to vote on it, therefore, and do not have to go home and raise their hand and say, "It was me. I am the one who stood for spending several hundred millions opening up a new tax loophole that benefits large profitable corporations."

I just urge that if this deal is not done—I am told it was done last night—if it is not done, rethink it, because somebody is going to live with the consequences, and somebody is going to have to stand up and say, "I am the one who believed we ought to open up new tax loopholes."

That is not what we ought to be doing. We ought to be closing tax loopholes.

We ought not be doing things to ship jobs overseas. We ought to keep jobs at home.

You talk about a perversion of constructive thought about economics. This is a perversion.

So I will not offer the amendment. I was going to offer a motion to instruct conferees. I do not think at this moment that is something that will accomplish what I want. I guess what I would like to do is simply serve notice

to Members of the Senate that if there is a vote in conference on this, I hope conferees will stand up and be counted.

If this comes to the floor in this bill, I hope it comes to the floor in a circumstance where we can have a good aggressive fight about it. I know they are going to wrap it up in conference and tie the bow and try to jam it through here so we do not have a chance to discuss this, but it is not going to go through here without some of us asking questions: For whom is this done? Who does it benefit? Who did it? Why did they do it? And how on Earth do they think this benefits this country if you are concerned about jobs and opportunity in this country?

Mr. President, I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator from North Dakota.

Despite the fact that I heartily agree with him, I hardly think that there are many in this Chamber or many across the country who would think it is a good idea to facilitate the exportation of jobs. That is about the silliest thing we can do, and, frankly, I think it has hurt America severely by providing ease of transportation, transmission, and relocation of jobs that used to be in America that we thought were relatively menial, low-skilled jobs that today would be very nice to have in our country.

The Senator's point is an excellent one, and I regret that we at this point cannot accommodate him, but I think the message is clear to those who are going to be on the conference committee that they ought to pay attention because it will be remembered for a long time to come if they ignore the opportunity to cut that flow.

I thank the Senator very much.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, momentarily I am going to be offering an amendment to correct a mistake the Treasury Department and Department of Transportation made in calculating allocation of highway funds.

I see my very good friend from Virginia is in the Chamber. He is a very valuable member, ranking member of the authorizing subcommittee and wishes to make a statement on this, and I should like to yield to my good friend from Virginia, Senator WARNER.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I know full well the Senator did not mean to call me ranking member. I do believe we have had a small matter of an election, and I am now the chairman.

Mr. BAUCUS. Excuse me. I am sorry.

Mr. WARNER. In any event, the distinguished Senator from Montana and I have worked together on many, many things over many, many years, and we

will continue, in all probability, to work together.

The point I wish to make is that when the Senator from Montana has the opportunity to present the amendment to the Senate, I wish to be recorded in opposition for the following reasons. There is nothing that I have witnessed in my period here in the Senate that is more divisive than the highway allocation formulas.

Mr. President, I do not know—I think I do know, but for the moment I do not have before me the documentation—who devised this formula years ago, but I know it requires many, many bureaucrats and many, many pages of reference material for even those in the Department of Transportation responsible for this allocation formula to figure it out.

I think it is incumbent upon the Congress next year as a part of the ISTEA reauthorization, in which I hope to play an active role, to revise this formula so: First, it is simple and can be understood and all States know the various factors that are taken into consideration to make the allocation; and: second, that it is fair.

Right now there are donor States and donee States. The donor State is a State in which the receipts from sales of gasoline in that State go to the highway trust fund and then the allocation from the highway trust fund comes back and that State gets a sum less than the total of the receipts paid by its constituents and such others that may avail themselves of the fuel in that State. Now, donees get a greater sum than the total of their revenues from the sale of gasoline as a Federal tax. So the time has come to reconcile this ancient formula with reality and with fairness.

What is the present problem? The Senator from Montana I think quite properly brings before the Senate the fact that someone—and I am not pointing an accusing finger of malice aforethought—misapplied a regulation, a rule or something.

As a result, Mr. President, we have 19 States, my State being one of the 19, which received an incorrect sum of money. In the case of Virginia, it is \$10,488,000, a sum of money which is greater than Virginia was entitled to under the complicated formula to which I have referred had that formula been properly administered by the unknown bureaucrat. And 18 other States are in a similar situation—Arizona, Arkansas, California—\$65 million for California—Colorado, Indiana, Louisiana, Massachusetts—I will not go on. They are here. I will put them in the RECORD. I so ask unanimous consent. I will name Oregon, Mr. President, the State of the distinguished chairman of the committee.

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

COMPARISON OF PROPOSED FY 1997 OBLIGATION LIMITATION BASED ON ESTIMATED FY 1997 APPROPRIATIONS

States	90 percent of payments estimated @ \$2.68	90 percent of payments estimated @ \$1.58 + \$135M	Difference
Alabama	316,954	317,760	806
Alaska	174,387	184,165	9,778
Arizona	238,340	233,851	(4,489)
Arkansas	196,398	189,800	(6,598)
California	1,490,847	1,424,889	(65,958)
Colorado	195,996	195,439	(557)
Connecticut	309,047	324,870	15,823
Delaware	67,550	71,008	3,458
District of Columbia	72,833	76,652	3,819
Florida	692,919	695,436	2,517
Georgia	511,466	528,744	17,278
Hawaii	106,597	112,055	5,458
Idaho	94,626	99,588	4,962
Illinois	592,113	604,958	12,845
Indiana	380,999	362,901	(18,098)
Iowa	178,942	181,124	2,182
Kansas	178,921	188,082	9,161
Kentucky	282,885	293,063	10,178
Louisiana	258,683	243,528	(15,155)
Maine	79,641	83,564	3,923
Maryland	260,348	258,343	(2,005)
Massachusetts	597,481	628,817	31,336
Michigan	488,272	463,353	(24,919)
Minnesota	247,475	228,404	(19,071)
Mississippi	194,751	193,413	(1,338)
Missouri	389,783	384,254	(5,529)
Montana	132,763	139,726	6,963
Nebraska	121,326	127,538	6,212
Nevada	99,084	99,599	515
New Hampshire	74,635	78,457	3,822
New Jersey	417,115	438,472	21,357
New Mexico	147,746	155,494	7,748
New York	912,361	959,076	46,715
North Carolina	427,763	420,165	(7,598)
North Dakota	88,859	93,409	4,550
Ohio	598,477	558,927	(42,550)
Oklahoma	246,635	245,416	(1,219)
Oregon	195,536	196,960	1,424
Pennsylvania	655,910	637,515	(18,395)
Rhode Island	74,195	78,086	3,891
South Carolina	248,779	258,338	9,559
South Dakota	97,350	102,456	5,106
Tennessee	363,093	353,238	(9,855)
Texas	1,132,043	1,105,498	(26,545)
Utah	112,946	115,506	2,560
Vermont	68,516	72,024	3,508
Virginia	381,449	370,961	(10,488)
Washington	283,047	297,892	14,845
West Virginia	137,862	144,921	7,059
Wisconsin	286,718	279,676	(7,042)
Wyoming	97,018	101,986	4,968
Puerto Rico	71,920	75,603	3,683
Subtotal	16,072,000	16,072,000	0
Administration	532,000	532,000	0
Federal lands	426,000	426,000	0
Allocation reserve	620,000	620,000	0
Total	17,650,000	17,650,000	0

Note: Estimated apportionments prepared by HPP-21

Mr. WARNER. Now, my position is that this correction should be done in the course of our consideration of the revision of this formula next year during ISTEA. Owing to the clear conscience of the distinguished chairman of the committee, the distinguished ranking member from New Jersey, the distinguished ranking member of the Environment Committee, our chairman, and indeed backup from well-informed staff, we decided not to do this amendment last night—I among others objected—as a managers' amendment—and I commend the managers of this bill for not trying to do this—which results in a considerable loss of money to 19 States.

The Senator has every right to do it as an amendment to the pending bill. Technically, I suppose it is legislation on this bill. I intend to vote, however the vote is taken, in opposition because I think the better course of action is to deal with this correction next year. These sums of money will not affect the ability of the several States, 50 of them, to go forward with their highway programs. My State, although it has been told it is going to get the \$10 million, has made certain plans to expend

this \$10 million, and it will require a certain perturbation in the planning to take \$10 million out of the budget for this year. And 18 other States will similarly be subjected to deducting from their highway budgets this sum of money. So that, to me, is the more equitable and more fair way to deal with this question. That would enable all the other Senators, many of whom are learning, presumably for the first time at this moment, knowledge of this problem.

The other reason I feel it should be done this way, and with due respect to the distinguished ranking member of the committee, the Senator from Montana, is we do not have before us—at least I do not—any letter from the Department of Transportation explaining to Senators exactly how this happened. Perhaps the Senator from Montana can articulate the problem in more detail. But it seems to me the Senate should have before it certain documentation from the Secretary of Transportation explaining how this happened and the need for it to be corrected by the Congress. It is apparent that the Secretary of Transportation has made the decision he cannot do it administratively within the executive branch, but it requires the Congress to act.

So I have concluded my remarks and, at such time as the distinguished Senator from Montana wishes, he can put the amendment forward. I hope other Senators will find the opportunity to speak on it. I yield the floor. I thank my colleague.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I appreciate the statement the chairman of the Subcommittee on Transportation of the Environment and Public Works Committee made. I understand the Senator's position, namely that although a mistake is made, and there is not anybody who disputes that a mistake was made, the point is the mistake could be corrected next year when Congress takes up reauthorization of the highway bill, the so-called ISTEA.

The problem with that is very simple. First of all, this is a mistake. This is not a formula question. When ISTEA comes up next year, this Congress will deal with the formula under which the highway funds are disbursed. This is not a formula question—not a formula question. This is correcting an administrative error the Department of Transportation and, more precisely, the Department of Treasury made. It is a simple correction.

I might also say the mistake that was made, and nobody disputes the mistake was made, is not a donor-donee question. The mistake distributes the dollars inappropriately to some States and does not distribute dollars inappropriately to other States, irrespective of the donor-donee question. This has nothing to do with donor-donee issues. It has nothing to do with the formula.

One more point which I think is even more salient is this. The States in

question here would not receive this money, if the mistake is not corrected, until fiscal 1997. So they are not going to be receiving any money this year, calendar 1996. They are not going to be receiving any money next year until after the fiscal year begins on October 1, 1997. So this is the appropriate time to correct the mistake, that is, before States would otherwise receive their money. It is a lot easier to correct a mistake before a State or somebody receives money than it is afterward. I know full well the States that receive their money, if they were to receive their money incorrectly next year, they are not going to be very likely to give it back.

I think, therefore, for all those reasons, the appropriate place to correct the mistake—nobody disputes the mistake was made—is right now. Just do it quickly and easily. Then, next year, this Congress will engage in a full battle royal, I know, over the allocation of highway funds.

For those reasons, I think this is more appropriate that the correction be made here and now, simply, rather than putting it off to next year.

Mr. HATFIELD. Will the Senator yield?

Mr. BAUCUS. I am glad to yield to the chairman of the Appropriations Committee.

Mr. HATFIELD. I discussed this matter with the Senator from Virginia, and I believe the Senator is willing to enter into a time agreement on this amendment of 1 hour, equally divided.

Mr. BAUCUS. Fine.

Mr. HATFIELD. I ask unanimous consent an hour limitation be given to the Baucus amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HATFIELD. Mr. President, I withdraw the request.

The PRESIDING OFFICER. The request is withdrawn.

Mr. BAUCUS. 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. LAUTENBERG. 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. LAUTENBERG. Mr. President, we are going to be waiting for a few minutes for other Senators who wish to speak to arrive. I would like to take a few minutes during that wait to lend my support to the amendment that will be offered by the distinguished Senator from Montana. I think it is well-intentioned, and I think the amendment is fair.

The one thing I want to be certain of is that this amendment is not going to be perceived as a formula fight, because that should not be. This is a correction. It corrects the fact that the Department of Treasury misinterpreted the revenue reports that were

put into a new format. The unfortunate result is that the Treasury Department grossly overstated the amount of gas tax receipts to the highway trust fund during 1994.

This error is acknowledged by the Treasury Department and by the Federal Highway Administration. Unfortunately, the FHWA is required by law to base a certain category of highway fund allocations on the Treasury's formal estimates, whether or not they are correct.

So, what the Baucus amendment seeks to do is correct the allocations made as a result of Treasury's error. And the amendment, I must say to my colleagues who were in the Chamber or who might hear us, the amendment will not deny any State the full 90 percent of the payments they are due through the Federal aid to highways formula program. What this amendment will do is to set these payments at 90 percent of what the States actually paid, rather than 90 percent of the Treasury's erroneous estimates.

We heard from the distinguished Senator from Virginia about the interest that he and the Senator from Montana have in terms of examining the formula. We will have a chance to do that, I assure you, at length, I believe. But we ought not to try to do it here, and that is not what is being attempted. Unfortunately, the impact of correcting this mistake results in certain States getting more and others getting less than they would otherwise receive if this correction were not adopted.

When reviewing this amendment, I hope that the Members will keep in mind that the bill before us provides an increase of \$100 million in the overall obligation limit for the Federal Aid Highway Program, from \$17.55 billion to \$17.65 billion, a \$100 million increase. This increase is going to help all States in meeting their transportation needs. While it is unfortunate that the legislation is required to correct this mistake, the Federal Highway Administration assures us that absent this bill language, the Secretary does not have the administrative authority to correct these highway allocations and bring them into conformity with what we now know to be the actual gas tax receipts.

I hope our Members will support this amendment. It is the right thing to do; it is the fair thing to do. The amendment is not an attempt to pick anyone's pocket in the dark of night.

Mr. President, I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Montana.

AMENDMENT NO. 5141

(Purpose: To require the calculation of Federal-aid highway apportionments and allocations for fiscal year 1997 to be determined so that States experience no net effect from a credit to the Highway Trust Fund made in correction of an accounting error made in fiscal year 1994)

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

and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS] proposes an amendment numbered 5141.

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

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

The amendment is as follows:

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

SEC. 3 . CALCULATION OF FEDERAL-AID HIGHWAY APPORTIONMENTS AND ALLOCATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), for fiscal year 1997, the Secretary of Transportation shall determine the Federal-aid highway apportionments and allocations to a State without regard to the approximately \$1,596,000,000 credit to the Highway Trust Fund (other than the Mass Transit Account) of estimated taxes paid by States that was made by the Secretary of the Treasury for fiscal year 1995 in correction of an accounting effort made in fiscal year 1994.

(b) ADJUSTMENTS FOR EFFECTS IN 1996.—The Secretary of Transportation shall, for each State—

(1) determine whether the State would have been apportioned and allocated an increased or decreased amount for Federal-aid highways for fiscal year 1996 if the accounting error referred to in subsection (a) had not been made (which determination shall take into account the effects of section 1003(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 1921)); and

(2) after apportionments and allocations are determined in accordance with subsection (a)—

(A) adjust the amount apportioned and allocated to the State for Federal-aid highways for fiscal year 1997 by the amount of increase or decrease; and

(B) adjust accordingly the obligation limitation for Federal-aid highways distributed to the State under this Act.

(c) NO EFFECT ON 1996 DISTRIBUTIONS.—Nothing in this section shall affect any apportionment, allocation, or distribution of obligation limitation, or reduction thereof, to a State for Federal-aid highways for fiscal year 1996.

(d) EFFECTIVE DATE.—This section shall take effect on September 30, 1996.

Mr. BAUCUS. Mr. President, this is a very simple technical correction amendment. Very simply, it corrects a mistake that the Department of the Treasury made. The administration tells us, incredibly, they need legislative authority to correct the mistake. This amendment simply does that legislatively, it corrects that mistake.

Nobody disputes that a mistake was made—nobody. The administration admits it, and the Senators who have spoken on this issue also admit it was a mistake.

What was the mistake? The mistake is very simple. Essentially, in 1994, the Treasury failed to credit the Highway Trust Fund with about \$1.5 billion, an administrative error, a bureaucratic error. The Treasury then corrected that error in 1995, credited the Highway Trust Fund with the 1994 mistake,

that is, the \$1.5 billion and also continued to collect revenues in 1995, as they should.

The problem is the extra bump, the additional revenue in 1995, that is not only the revenue to be collected properly in 1995 but also the additional \$1.5 billion credit because the mistake was made in 1994, that additional bump skewed the formulas, because the formulas are based upon the revenue that was received in 1995; that is, the formula's distribution for future years is based upon the 1995 receipts.

The Department of Transportation has written us a letter saying that they cannot correct this mistake administratively and cannot, by their own administrative procedures, correct this error. They say it has to be made by legislation. It is a pure and simple error, pure and simple mistake. I think it is appropriate at this time to correct the mistake.

I might say, Mr. President, this is not a donor-donee question. This has nothing to do with the claim that some States have that they are so-called donee States, that is, their citizens are contributing more dollars in gasoline taxes in the Highway Trust Fund than they are receiving in highway formula distributions. This is not that issue. In fact, the mistake that the Treasury made results in a misallocation which is totally independent of the donee-donor issue—totally independent; it has nothing to do with it.

I remind my colleagues who might think this is an allocation question, that this might be, "Oh, here we go again, one of those battles where States are trying to get more money for themselves," this is not that issue.

We will have an opportunity to deal with that question next year. Why next year? Because next year the Congress is due to reauthorize the highway bill, ISTEA. The States have been dealing with the formula under ISTEA for the past several years. The last ISTEA was passed in 1991. Here we are in 1996. The next ISTEA 6 years later will be passed in 1997. That is the opportunity and the place to figure out what the proper formula is in distribution of highway funds.

There will be a lot of good arguments made by a lot of Senators as to what that formula should be. A lot of factors go into it. Obviously, population density, miles traveled, population growth—a whole host of factors. And next year the Congress will dig down deep, try to figure out which factors, which indicators make the most sense, and we can deal with that issue then.

That is the time, next year, to deal with the formula. It certainly is not here on the floor of the Senate at the end of July, this is not the time to deal with the highway allocation formula. This is not a formulation, this is simply correcting a mistake which everyone agrees was a mistake and should be corrected.

Some might ask, "Gee, why don't we take up this mistake and correct this

mistake next year when we take up the highway bill?" The answer to that is very simple, Mr. President. It is this: The maldistributions, the unjust-enrichment distributions that will be allocated under this mistake will not occur this year in 1996, they will occur in the next fiscal year, 1997. So those States who unjustly are enriched by a clerical bureaucratic mistake will not be receiving any funds until after October 1 of next year, 1997.

So now is the time to correct the mistake; that is, before States receive money they should not receive and before States do not receive money that they should receive. Now is the time to correct the mistake.

Sure as we are here tonight, Mr. President, we know next year after October of 1997—and ISTE A will certainly come up later than October of next year, that is the new highway bill as we deal with the new allocation formula—States are not going to want to give back money they improperly receive. They already will have received the dollars. So now is the time in 1996 to correct the mistake so States are in a lot better position to deal with what is proper here.

I might say, too, Mr. President, that 19 States benefited by this mistake; 31 States were injured, harmed by this mistake. The amendment I am offering simply returns us to the status quo. It does not tilt the formula any way, one way or the other. It is totally a restoration of the status quo; that is, a total correction of a mistake that was made, which means under this amendment 31 States will be better off, 19 States will be worse off, compared with where they would be if the mistake were not corrected. The amendment here simply again is to correct the mistake. I would like to read the names of the States, Mr. President, which will benefit under this amendment, that is, returned to the status quo, that is, States which will then be receiving what they are supposed to be receiving under the ISTE A bill, the highway bill. Here are the States: Alabama, Alaska—so if you are one of these States, you are a State that is being unjustly, unfairly harmed by a bureaucratic error. This amendment would add dollars back to correct that mistake so we are back to the status quo.

Again: Alabama, Alaska, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, West Virginia, and Wyoming. I might also add, Puerto Rico would be in that list as well.

Very simply, I will sum up, Mr. President, by saying this is an attempt to correct a mistake. Everyone admits it is a mistake. This is not a donee-donor question. Now is the proper time to correct the mistake because funds

have not yet been allocated. They will not be allocated—under the mistake—until 1997, fiscal 1997. That is beginning October 1 of next year.

So now is the time to correct it. The issue of how we allocate disbursements should be addressed when we take up the highway bill next year. I have given the names of the States that will be benefited under this amendment. Again, they are States who are harmed by the mistake but to be returned to the status quo. Thirty-one States in that category.

Mr. President, I see the chairman of the committee, my very good friend, John CHAFEE on the floor. And he also supports this amendment for the correction for the States. I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I support the amendment by the ranking member of the Senate Environment and Public Works Committee, the distinguished Senator from Montana.

Mr. President, the amendment by the Senator from Montana corrects an accounting error made by the Department of the Treasury in 1994.

There may be some confusion as to whether under this amendment States will receive full credit for contributions made to the highway trust fund. Under the Baucus amendment the States will receive full credit for all contributions made to the highway trust fund but they will receive that credit in the year that they were actually collected rather than when they were recorded on the Treasury ledger.

I would like to emphasize that this is not an attempt to rewrite the highway funding formula under the so-called ISTE A, the Interstate Transportation Act. This is not a highway trust fund formula amendment. And I do think it is very, very unfortunate that the clerical error has resulted in confusion, and indeed understandable irritation for Members of this body. Frankly, Mr. President, I greatly wish it had never occurred so that we would not be here trying to straighten things out.

I realize that some Members of this body believe that the formulas that distribute highway funds are not fair or appropriate. And that is a legitimate concern. Members will have their chance to make their case for changes in the formula next year when we reauthorize the highway program. The Environment and Public Works Committee plans to commence hearings on the reauthorization of the so-called ISTE A in September of this year. We will continue those hearings next year. We want to get on with this bill. We have to get on with it next year. At that time we definitely will have arguments over the formula and what should go into it.

The Senator from Montana ticked off some of those items. For example, should we count the amount of interstate highway mileage, the State's population, the miles driven, the amount

of highway trust fund contributions, the number of deficient bridges? All of those are legitimate things to consider when we deal with the formula.

That will be a very healthy debate, I can guarantee everybody here, because you have donor States who put in more than they get back and you have donee States that receive more than they put in. Legitimately, the States that put in more are distressed. And the States that put in less think that, well, this is a National Highway System so you should not get back exactly what you put in. That is OK. We will debate that vigorously.

But I do believe that it is unfortunate and not appropriate, when we are trying to straighten out a bureaucratic error, to change the current formula that has been agreed to, was agreed to by Congress in 1991. The distribution of funds in the highway program structure are issues that must be debated on the merits, as I said, when we reauthorize the basic legislation.

Some would say, "Well, OK, if you want to straighten out this problem, wait until next spring when you deal with the highway reauthorization. Why do we take it up now?" We are taking it up now because the problem that we are talking about will be compounded if we wait. Now is the time, difficult though it might be. Some might say, "Oh, well, in the list that the Senator from Montana read off, Rhode Island will get back some money that they should have gotten, and others will have to restore some of the extra money that they received." As I say, we wish that all had not occurred. But if we wait, the problem, as I say, will become more difficult.

I would like to raise, Mr. President, a concern regarding the public perception of this issue. Failure to approve the amendment by the Senator from Montana will mean that an accounting error will generate more than \$1 billion in false spending authority. This situation obviously will be difficult to explain to taxpayers when they are concerned about reining in Federal spending. Moreover, unless it is corrected, this error will create the image of an irresponsible Federal Government which cannot correct an error. So I hope we will support this amendment and get on with it, difficult though it might be. I thank the Chair.

Mr. GRASSLEY. Mr. President, I rise in support of the amendment being offered by Senator BAUCUS, and my colleagues Senator CHAFEE and DOMENICI. Due to the error by the Treasury Department, my home State of Iowa stands to lose \$2,182,000 from the highway trust fund. This amendment would correct the Treasury Department's error, restoring the money.

I understand that the Treasury Department did not correctly credit \$1.6 billion to the highway trust fund in fiscal year 1994. The Treasury then corrected this error in fiscal year 1995. However, by not correctly attributing the funds to fiscal year 1994, the Treasury action is adversely affecting the

distribution of highway funds to 31 States in fiscal year 1997. This is unfair. These States are being unfairly penalized through no fault of their own. They are being penalized by an error by the Treasury Department.

I urge my fellow Senators to join the Senator from Montana, myself, and the other cosponsors of this amendment to correct this error. It is the right thing to do.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I am somewhat puzzled by this debate because what has happened is that the error has been corrected. No one is saying that there is a problem in the allocation in the bill before us. What we are seeing here is an effort to use an appropriations bill to try to go back and impose a change on a formula which this year is fair to correct a problem which it is asserted existed last year.

Let me remind my colleagues of how we came to this point. The apportionment of highway dollars to States is based in part on the actual motor fuel taxes collected in the State, and the law says that the most recent data available will be used.

In fiscal year 1996, the most recent data available was an estimate of fiscal year 1994 collections. The Secretary of the Treasury certified that that was the data that was available. On the basis of that data and the law, an allocation was made. The Department of the Treasury was late in reporting the 1994 actual data collection to the Department of Transportation and therefore they relied on the data that was available at that time. What we are being asked to do now is to go back and change a formula which has already been adjusted.

In listening to our colleague from Rhode Island, one would get the view that the current appropriations bill before us has an unfair allocation of funds under ISTEA or an allocation which is based on old data. But unless I am wrong—and I would be happy to be corrected—that is not the case.

No one is asserting that this appropriations bill in any way is in error in allocating funds. What is instead being asserted is, that since the most recent data available when this was done last year was the estimated 1994 data, which therefore under law was used, that if the actual 1994 data had been available, that the funding formulas would have generated a different result. Are we, Mr. President, every year, going to go back and second-guess the formula? Or are we going to follow the law?

Now we have one of these things that, from time-to-time, happens, where by going back and changing the base-year data, more States benefit than lose. The bottom line is that no one here has asserted that the Secretary of the Treasury or the Secretary of Transportation did not comply with

the law. The law says that the allocation will be based on the most recent data available. It was based on the most recent data available last year.

No one asserts that the current formula is wrong. But what is being asserted is that, using data that was not available last year, we could go back and reallocate these funds and take an allocation which this year no one disputes is a fair allocation, but we would go back and take money away from States in a formula that no one argues is unfair, to basically allocate funds, not according to the law last year, since the estimated 1994 data was the most recent year available, but according to how it would have been allocated if data had been available which was not available.

Here is my point: I think you can argue endlessly on these things, but I do not think this is the place where the argument should occur. This is an appropriations bill. Obviously, what we have here is an attempt to change the allocation. The amendment changes an allocation, which no one disputes as being valid, to try to reallocate funds from last year.

It is true that nobody here would dispute that if the actual 1994 data was available last year, instead of the estimate, the allocation might have been different. But it was not. The law says very clearly that the allocation is based on the most recent data available. I believe if we are going to deal with this issue, we need to deal with it when we are reauthorizing ISTEA, and we need to deal with it not just for this year but we ought to set out a principle. I think it makes absolutely no sense to simply go back and say, if data had been available then, which was not available, the allocation might have been different, and therefore take a year where no one disputes the allocation and reallocate the money, because 31 States will benefit and only 19 States will lose. I hope we will table this amendment because it clearly is legislating on an appropriations bill. I think if we start opening these formulas up to this kind of debate, it is going to make it very, very difficult for us to be able to pass these appropriations bills. I am not at this point ready to give a time limit on this bill. I think we should vote on tabling it, and then I think we will want to look at second-degree amendments.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. 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. BAUCUS. Mr. President, I want to enter into the RECORD a couple of letters from the administration which document that a mistake was made. The first is a memorandum from the

Department of Treasury. I would like to read several portions of it without reading it in detail.

In fiscal 1994 an accounting error, described in greater detail below, resulted in a \$1.590 billion misallocation of excise taxes against the Highway Trust Fund. This misallocation of excise taxes was corrected in fiscal year 1995.

Another portion reads:

This change led to a misinterpretation of the information provided to FMS on the IRS Quarterly Certification and resulted in a misallocation of excise taxes between the Highway Trust Fund and General Fund in Fiscal Year 1994. This misallocation of excise taxes was corrected in Fiscal Year 1995, debiting the General Fund and crediting the Highway Trust Fund in the amount of \$1.590 billion. Procedures have been implemented to assure that future adjustments to the Highway Trust Fund occur in an accurate and timely manner.

I ask unanimous consent that this document be printed in the RECORD.

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

DEPARTMENT OF THE TREASURY,

Washington, DC, July 31, 1996.

Memorandum to: Senator John H. Chafee, Chairman, Environment and Public Works Committee, U.S. Senate, Washington, DC.

From: Linda L. Robertson, Assistant Secretary (Legislative Affairs and Public Liaison).

Subject: Correcting the misallocation of excise taxes between the highway trust fund and the general fund.

In Fiscal Year 1994, an accounting error, described in greater detail below, resulted in a \$1.590 billion misallocation of excise taxes, against the Highway Trust Fund (HTF). This misallocation of excise taxes was corrected in Fiscal Year 1995.

The initial transfer of receipts to the Highway Trust Fund is based upon monthly estimates provided to Financial Management Services (FMS) by the Office of Tax Analysis. Subsequently, FMS uses the IRS Quarterly Certification of "actual" liability to adjust the Highway Trust Fund balance for any difference between amounts initially transferred and "actual" quarterly liability. This adjustment is referred to as the "Correcting Adjustment."

At the request of OTA, the format of the IRS Quarterly Certifications used to make correcting adjustments to the Highway Trust Fund was changed. This change led to a misinterpretation of the information provided to FMS on the IRS Quarterly Certification and resulted in a misallocation of excise taxes between the Highway Trust Fund and the General Fund in Fiscal Year 1994. This misallocation of excise taxes was corrected in Fiscal Year 1995, debiting the General Fund and crediting the Highway Trust Fund in the amount of \$1.590 billion. Procedures have been implemented to assure that future adjustments to the Highway Trust Fund occur in an accurate and timely manner.

Mr. BAUCUS. Mr. President, very clearly, the Department of Treasury admits the error, a \$1.590 billion miscalculation. To review this, so that Senators understand how this procedure works, by law, there is a 2-year time lag, which means that because a mistake was made in 1994, by definition, 1996 allocations were not made in advance of what the formula would

otherwise require, because in 1994, almost \$1.6 billion was not credited to the highway trust fund. In 1996, the formula was based upon the amount that is in the 1994 account. Since the 1994 account was deficient by \$1.6 billion, by definition, States were not overpaid in 1996. So no States were overpaid in 1996.

Again, as I said, by law, the allocation is made 2 years after the account is so-called certified. Well, in 1995, after the mistake was discovered, not only were normal 1995 accounts received from States and the highway trust fund credited with the usual amount it should have been, but in addition to that, the mistake—the \$1.6 billion—was added on top of the 1995 account, which overstated 1997 payments. So the correction we are trying to make here today is a combination of 1994 and 1995, the underpayment in 1994, as well as the overpayment in 1995, which determine the State allocations in fiscal years 1996 and 1997.

I might add, Mr. President, I have another letter from the Department of Transportation—actually, from the Federal Highway Administration, signed by Rodney Slater, Administrator.

It states in part that it is unable to administratively make the correction. I can read portions of that, but Senators may read the letter. It is a little bit technical and bureaucratic. But the long and short of it is that they admit the mistake and explain what would have happened had the mistake not occurred. They state that it has to be corrected by legislation.

I listened with great curiosity to the arguments of the Senator from Texas. He, in a sense, was saying that because the 1994 allocation was determined as it was, and the mistake was made, we should close our eyes and be blind to any mistake that might have been made. He is saying, by law, the 1996 allocation should be determined by what the 1994 receipts are, and a mistake was made, but do not look at the mistake because that is what the law said in 1994.

Mr. President, we are only saying that everyone admits it was a mistake. The Department of Treasury documents it was a mistake, as does the Department of Transportation. Senator WARNER was on the floor not long ago and also admitted the mistake.

I guess the real question is, if it is a mistake, do we correct it or not? That is the issue. Very simply, if a mistake is made, should it be corrected, or should it not be corrected?

I submit, Mr. President, to ask the question is to answer it. Of course, we should correct the mistake. That is what normal, civilized human beings do—correct mistakes.

The other argument I have heard is, well, gee, even if a mistake was made, don't correct it now, correct it next year. Well, we all know, Mr. President, one of the greatest problems that we as human beings have is procrastinating, putting off what we can do now.

Here we are tonight. Let us correct this mistake. We could, I suppose, take it up next year when ISTEA comes up. But ISTEA is the highway bill. The highway bill battle is to determine what the allocation should be. We are not arguing what the allocation should be. That is an argument that Senators will engage in next year, in 1997.

I might also say—repeating myself—if we don't correct the mistake now, next year the States will receive dollars they should not receive, and they are not very likely to want to send the dollars back, even though they know they should.

We are really put to a test here, Mr. President. The real test is: Are we going to live up to our word or not? I might say, particularly, as Senators, that is really the issue here. Sure, if a State is unjustly enriched, it is kind of fun to get the extra dollars. But if it is unjustly enriched because of a mistake, we all know we should not accept those dollars, and we should correct the mistake, according to the formula and understanding that we all had when we passed the highway bill in 1991.

So that is really the deeper underlying question here tonight. Are we Senators going to live up to our word? Or are we going to be greedy and take advantage of a mistake that was made, even though we know that is not fair, that is not the right thing to do? That is the deep underlying question here tonight that we have to ask ourselves.

I say, Mr. President, that it is very clear. I am surprised that we are debating this. I am surprised that this amendment was not automatically accepted. It was a mistake. We are not in a highway allocation fight tonight. This is not a donor-donee issue. We all know it is better to correct something sooner than later. So let us correct it tonight.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me reiterate that there is no mistake involved here. In fact, nobody has said there is a mistake involved here.

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

Mr. GRAMM. Let me make my point, and then I will be happy to. Here are the facts: ISTEA says that the allocation of funds among States shall be based on the most recent data available. That is what it says. The most recent data available, provided by the Treasury Department, was the data which was, in fact, provided under the law.

In fact, if you will read the letter sent to Senator BAUCUS, basically that letter makes it clear that it is the Department of Transportation's position that it does not have authority to use anything other than the official accounts of the trust fund maintained by the Department of the Treasury in calculating apportionments among the States.

Here is the point. When the Treasury gave their estimate, they gave that es-

timate based on the best data they had available and required by the law. It is true that, if you go back after the fact and take data that they did not have that they could have had, you could have allocated funds differently. But to call that an error is simply a misuse of the English language. The Department of Transportation used the best estimate they had based on the data they had.

Now, what the Senator from Montana is trying to do is to say that, because they did not have data then which they now have, that we should now go back and alter allocations. No one disputes that the 1997 formula, which is in the bill before us, is based on the newest data, which no one disputes as being the best available data that apparently everyone is satisfied with, no one says that the allocation of funds in this bill are in any way unfair for fiscal year 1997. If they do, I have not heard it.

But what the Senator is saying is that because the Treasury did not have final 1994 data in 1996 when they did the estimate, and because they gave the best data available, complied with the letter and the spirit of the law, that knowing now what that data turned out to be after the fact that we could go back last year and rewrite the formula.

Clearly, ISTEA provides no authority whatsoever to do that, and what is being sought here is rewriting ISTEA. This is legislation on an appropriations bill. This is taking an allocation for 1997, that no one disputes as being valid, and changing it to reallocate funds to reflect an allocation that would have occurred had the Department of Transportation had data which was not available.

It seems to me that this is gamesmanship that we can engage in endlessly. Let me give you an example.

Next year we may have the final 1995 data. Next year we might even have the 1996 data. It would be possible for this Senator or any other Senator next year to stand up and say, "When the allocation was done for 1997, the Department of the Treasury relied on 1995 data, but actually, if they had known what the 1996 tax collections would have been, they could have had a different allocation."

My point being, this amendment could be offered every single year because there is a lag in available data that the Treasury is able to provide the Department of Transportation to do these estimates. What we have done in the past is simply each year made the fairest estimate that we could make. But I am not aware that we have ever gone back retroactively and said, if Treasury had had newer data and if they had provided it to the Department of Transportation data that we now know but was not known then, could not have been known then, that last year's allocation could be rewritten.

I hope my colleagues will understand and agree with me that next year this

same amendment could be offered because next year we will have the actual data for the next year in this series—1995–1996. We could stand up and argue that the actual allocation in the bill before us—not last year—is wrong because it is based on 1995 data which is the best data available but that next year when we get 1996 data it might produce a different allocation.

The point is that while 31 States in fact do benefit, some very slightly, by this reallocation, this amendment could be offered every single year to every Department of Transportation allocation of funds under ISTEA because each year we get a new data point. You could take that data point which was not available when the funds were allocated by the formula, but, if it had been available, the allocation would have been different.

Do we want to do this every single year? Am I to stand up next year when the 1996 data is available and say had we known in writing in the 1997 allocation what the actual 1996 data was, which we do not know today, that the allocation would have been different and Texas would have gotten more money and, therefore, I want to go back retroactively and take money in the 1998 bill away from some other State, perhaps Montana, to give to Texas?

I think this is a very, very bad precedent, and it is something that could be done every single year. That is the point. I hope that we will not do this because we are setting a precedent that it seems to me simply leaves chaos in the allocation of these funds.

I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from Texas—by the way, one of the biggest beneficiaries of this bureaucratic snafu, his State, gets more dollars as a result of this bureaucratic snafu than almost any other State.

Mr. GRAMM. That is not correct. California loses the most dollars under your amendment.

Mr. BAUCUS. I said one of the most. I did not say “the.”

He is saying that, under the law, the allocation is made according to the best data available. The fact is the data was available and is available in 1994. Do you know what happened? Some bureaucrat punched the wrong keys. So the allocation was put over to the general fund instead of the highway trust fund. The data is always available. It is collected. Just some bureaucrat, somebody, made a mistake and punched the wrong buttons in the computer. So the allocations from States, gasoline receipts from States, a portion of it, was put in the wrong account. It was put in the general fund, not the trust fund. The data was available.

More importantly, I am astounded at the argument of the Senator from Texas. The Senator from Texas who

rails against bureaucracy, who rails against the Federal Government, is standing here tonight basically standing up for the bureaucratic “snafu protection act.” As he says, if a bureaucrat makes a mistake, we do not correct it. If the bureaucrat makes a mistake, we do not correct it, and we do not come back here on the floor and try to correct the mistake. I am astounded, absolutely astounded, that the Senator from Texas would stand up and say we should let a bureaucrat who makes a snafu continue the effect of that mistake and do not correct the mistake even though the result is \$1.6 billion of unfairly distributed highway trust funds.

That is essentially what he is saying. Essentially that is what he is saying. Do not correct the mistake. If we come back here next year and find a mistake, we should not correct it.

I hope we do not come back here next year and correct this mistake again. The Department of Treasury has said, and I take them at that their word, in a memo they sent up to us here tonight, “Procedures have been implemented to assure that future adjustments to the highway trust fund occur in an accurate and timely manner.”

Now no one can guarantee they will not make a mistake again. I would guess tonight there are a lot of red-faced folks over there in the Department of Treasury perhaps watching this debate saying, “Oh, my gosh, how do we make that mistake? How in the world did that happen? Boy, don’t we have egg on our face.” It is true they do. They made a booboo, a \$1.6 billion mistake.

So all we are saying is let us correct it. The Senator is wrong when he says this is an allocation fight tonight. It is not that. Nobody who is listening to this debate believes it is. Nobody who is listening to this debate believes the argument that this is an allocation fight. This is simply an effort to correct a mistake. That is all it is, pure and simple.

Now somebody can come up with some kind of sophistry, argument, turn on the tail and come back around, and so forth, to try to confuse people. This Senator is not trying to confuse anybody. This Senator is trying to very plainly ask the Senate to correct a mistake that was made—and this is another point, Mr. President—so that when we go into ISTEA next year there is a better taste in people’s mouths; that Senators will be more inclined to know that the base is fair.

I tell you, Mr. President, if this mistake is not corrected, there is going to be a lot of bitterness in that debate next year as we begin to try to figure out what the correct allocation is because Senators will know that a mistake that should have been corrected was not corrected and we are starting off basically with a base that is the result of a big snafu and that snafu is compounded every cycle.

I do not think we want that. I think we want to start off on a level playing

field, and the level playing field will be the restoration of what the formula is supposed to be and that will be the case if this mistake is corrected.

Mr. President, I ask unanimous consent to add Senators GRASSLEY and BINGAMAN as cosponsors to the pending amendment.

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

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I do not know that we are gaining very much in dragging this dead cat back and forth across the table here, but let me go back to the point which I think is relevant.

Where is this snafu? I see no documentation of a snafu.

Let me go back and outline exactly what the law says and how it works and make clear what the Senator is calling a bureaucratic snafu, the pressing of a button by a mindless, nameless bureaucrat. If the Senator has data to show that, if the Senator has documentation to show that a bureaucrat pushed the wrong button, this Senator would like to see it. But I do not have it.

Now, here is what I understand the facts to be. Under ISTEA, the Department of Treasury, based on the newest data available to them, gives an estimate to the Department of Transportation as to how much in highway trust funds is collected by States.

When this estimate was given for last year’s appropriation, the Department of Treasury did not have the final 1994 data, as I understand it. If someone has evidence to the contrary, I would like to see it. But based on everything that I have seen, based on all the correspondence that is available, the Treasury Department, based on the newest data they had, gave an estimate of tax collections by State to the Department of Transportation, which, based on that data, which at that point, to the best of my knowledge or anyone else’s knowledge, was the best data that was available, on the basis of that data the Department of Transportation allocated funds in last year’s appropriations bill which in fact we voted on and it became law and the funds were allocated.

What is being called a snafu here is that based on the best data they had last year, the Department of the Treasury made an estimate, and if they had data that is now available 1 year later they would have made a different estimate and the allocation formula would have been different. But that is not a snafu. Basically, they were using the best data they had last year just as we are using the best data we have this year.

My point is that it is distinctly possible, in fact probable, likely, that next year when we have 1995 and 1996 data we will find the allocation used for 1997 would have been different had we had this data, which we did not have this year.

The point being each and every year we can go back and second-guess last year's estimate based on data that the estimators did not have. I would be able, if we set this principle, to offer an amendment to next year's appropriation based on actual data that will be available next year which is not available this year to say that the formula this year would have been different had we had another year of data. And it will be. Invariably it will be.

There is no mistake in the current allocation based on the newest and best estimate we have, but what the Senator from Montana is saying is that the estimate made last year was made on the data which was available then. I do not know that he is arguing a conspiracy by the Treasury. I hear the word *snafu*, pressed the wrong button, but I do not have any data to substantiate that, and I would be willing to look at it if there is data. But based on everything they knew, the Treasury made an estimate last year, and on the basis of that estimate we allocated money.

Based on everything they know this year, they made an estimate, and we are allocating money again. But if we are going to go back and change this year's formula based on new data that was not available last year, why can we not do that next year and the next year and the next year?

The whole purpose of this system is to take the best data available and allocate funds on the basis of it. That is what, based on all the information that I have, the Department of the Transportation did. And relying on this data—and the law requires the Department of Transportation to rely on this data—they allocated funds. Now the Senator is saying a year later that if we had had new data that has since become available, the allocation would be different. He is right. But the point is the same will be true next year about this year. The same will be true year after next about next year. If we are going to get into a situation where every year we are going to look back at the last allocation based on data that was not available when the allocation was made, we are going to be able to reestimate everything.

Was it a *snafu* that the estimate they had last year based on the best data turned out not to be right when they got the final data? I do not think it was a *snafu*. It was an estimate based on what they had. It is no more a *snafu* than the data we are using this year, when next year we have an additional year, will clearly be different. And by the same logic I could stand up here and say it was a *snafu* last year. Based on the data the Treasury had last year, we had an allocation of money, but now 1 year later with actual data they did not have, I want to go back and reestimate the allocation.

I think we are inviting chaos if we go down this road because we could do it every single year. Was the estimate last year more inaccurate than the es-

timate this year will turn out to be? I do not know. Maybe it was. Maybe it will be less inaccurate than the estimate this year will turn out to be. The point is, the law requires the use of the best available data. Based on everything I know, that was done.

The Senator talks about *snafus*, about pushing the wrong key on the computer. I do not know about any of those things. I see no documentation whatsoever. All I have seen documentation on is that, based on the best data they had, the Treasury made an estimate. We allocated funds on it. Now that they have another year of data, if they were making the estimate today, it would be different.

That is like saying, if I am predicting what is going to happen next year, that it is a *snafu* that I have imperfect knowledge relative to what I will have next year after I have lived out the year. I do not call that a *snafu*. I simply call it having to make decisions on the best data that is available.

I think this is a fundamental issue. I think many of my colleagues started this debate saying there was a mistake made in last year's estimation because they did not have data which we now have. It just so happens, in that mistake, 31 States gain and 19 States lose. The point is the exact same facts will exist next year and the next year and the next year and the next year, and maybe it will be other States who will gain next year and other States who will lose. But we are creating a chaotic situation if we are going to try to go back each year and redo last year's formula, based on data that was not available last year.

That is why, while this is not be-all and end-all of the planet, this is a bad principle and it is a principle we are going to end up refighting every year.

In fact, if we start down this road, we might as well have a 1-year lag of collecting the money to allocate it because we are going to end up, every single year, rewriting this formula. Because every Senator is going to check the allocation based on the new data that will be available next year, reestimate the allocation this year, and all those who will gain are going to stand up, as our dear colleague is saying, and say, "There was a *snafu*. Somebody pushed the wrong computer key. Somebody made a mistake. They predicted the future and the future turned out to be different, and therefore we ought to go back and correct that."

The point is, that is not how the system works. If we are going to do that, we are going to create chaos, and that is why I hope we will not do it.

Mr. MACK. Mr. President, I am here today to oppose the amendment being offered even though my State, Florida, would marginally benefit from its passage.

This amendment is said to correct a bureaucratic error—a mistake which resulted in many donee States receiving for 1 year less than what they thought they were entitled to under the law.

Well, it is extremely hard for me to be sympathetic to this argument. I know a good number of States—donor States—who, for the last 5 years, feel they got far less than that amount to which they were entitled. They would call the formulas enacted in law during ISTEA a mistake.

I believe the amendment now being considered appropriately highlights the problems that result from a muddled, inefficient, and overly bureaucratic Federal highway program.

So, not only is it my intention to oppose this amendment tonight, but it is my intention to be a leader in the fight next year to move our Nations' transportation program away from the Federal highway program that exists today.

It is high time to harness the ingenuity of State officials and local governments, the entrepreneurialism of private industry, and the strength of the financial markets to enhance the Nation's transportation infrastructure. It is time to recognize that the national interest may be best served by allowing States to assume the primary role in transportation uninhibited by Federal mandates, the redistribution of States gas tax dollars.

I look forward to working with my colleagues next year to return the primary role in transportation to our States.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Mr. President, I do not want to prolong this either, but I would much rather read facts into the RECORD than sit here in a quorum call. So I will correct the misinformation we just heard from the Senator from Texas.

The Senator from Texas is trying to imply this is an error in estimating the highway trust fund, it is not a bureaucratic error. I would like to address that by reading the memorandum to the chairman of the committee from the Department of the Treasury, dated today.

There is a little bit of bureaucratese in here, but, if you listen closely, you can tell this is not an estimate problem, it is a bureaucratic problem. I will read from the beginning.

In fiscal year 1994, an accounting error, described in greater detail below—

It did not say an error in estimating, in estimating receipts. It says "an accounting error." An accounting error was made—

Resulted in a \$1.590 billion misallocation of excise taxes against the Highway Trust Fund. . . .

Then it says:

This misallocation of excise taxes was corrected in Fiscal Year 1995.

Then going on:

The initial transfer of receipts to the Highway Trust Fund is based upon monthly estimates provided to Financial Management Services . . . by the Office of Tax Analysis. Subsequently, FMS uses the IRS Quarterly Certification of "actual" liability to adjust the Highway Trust Fund balance for any difference between accounts initially transferred and "actual" quarterly liability. This adjustment was referred to as the "Correcting Adjustment."

More importantly:

At the request of OTA, [that is the Office of Tax Analysis, in the Treasury] the format of the IRS Quarterly Certifications used to make correcting adjustments to the Highway Trust Fund was changed.

I will repeat that statement.

At the request of OTA, the format of the IRS Quarterly Certifications used to make correcting adjustments to the Highway Trust Fund was changed.

The format was changed.

This [format] change led to a misinterpretation of the information provided to FMS on the IRS Quarterly Certification and resulted in a misallocation of excise taxes between the Highway Trust Fund and the General Fund in Fiscal Year 1994.

The problem is not a miscalculation of the estimates. It was a mistake made because of a change in format. Somebody over there did not understand the new format and took the data, the correct data, but put it in the wrong account.

This misallocation of excise taxes was corrected in Fiscal Year 1995, debiting the General Fund and crediting the Highway Trust Fund in the amount of \$1.590 billion. Procedures have been implemented to assure that future adjustments to the Highway Trust Fund occur in an accurate and timely manner.

This has nothing to do with what the right estimate is, nothing at all. This has everything to do with just a bureaucratic mistake in misinterpreting a new format, that is all this is. It is very clearly a clerical, bureaucratic error. It is not an error in estimating tax receipts, not at all. It is an error made in computing the adjustments that were made between the Highway Trust Fund and the General Fund. That is all this is, stated clearly by the Department of the Treasury. That is the technical argument.

The basic argument, Mr. President, is: Here we are. This is the end of July. This is 1996. What special is going on right now in America? It is the Olympics. In the world? It is the Olympics down in Atlanta, where people compete fairly. They compete according to the rules, and there are winners and losers, according to the rules. Certainly Senators, if they want, can take advantage of a mistake, take advantage of something that is unfairly given to them at the expense of somebody else. Or they can live by the rules, live by the rules and not take advantage of an ill-begotten gain but rather say, yes, that is not fair, let us correct this, when the real battle on highway allocation of trust funds is next year when Congress takes up the transportation bill.

That is what this is all about, very simply, very plainly. Are we going to

correct a mistake or are those Senators who are enriched by the mistake going to take advantage of that mistake? Or are they going to say, yes, a mistake is made, let us correct the mistake and let us go on.

I made a point earlier, which I think is one worth remembering. That is, if this mistake is not corrected, it is going to sour the debate next year when Congress takes up the highway bill, because Senators are going to know the debate begins not with what it was supposed to be, not as was determined by the 1991 highway bill. Rather, it would be based as a result of a bureaucratic snafu, and I do not think we want that. I think we want to correct the mistake.

I urge my colleagues to just basically correct the mistake and get ready for the battle next year when we take up the highway bill in earnest, because that is the proper place to do all that.

Mr. President, I ask unanimous consent the letter, dated July 31, 1996, from Linda Robertson to Senator CHAFEE, be printed in the RECORD, and I yield the floor.

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

DEPARTMENT OF THE TREASURY,
Washington, D.C., July 31, 1996.

Memorandum to: Senator JOHN H. CHAFEE,
Chairman, Environment and Public
Works Committee, U.S. Senate, Wash-
ington, DC.

From: Linda L. Robertson, Assistant Sec-
retary, (Legislative Affairs and Public
Liaison).

Subject: Correcting the misallocation of ex-
cise taxes between the highway trust
fund and the general fund.

In Fiscal Year 1994, an accounting error, described in greater detail below, resulted in a \$1.590 billion misallocation of excise taxes, against the Highway Trust Fund (HTF). This misallocation of excise taxes was corrected in Fiscal Year 1995.

The initial transfer of receipts to the Highway Trust Fund is based upon monthly estimates provided to Financial Management Services (FMS) by the Office of Tax Analysis. Subsequently, FMS uses the IRS Quarterly Certification of "actual" liability to adjust the Highway Trust Fund balance for any difference between amounts initially transferred and "actual" quarterly liability. This adjustment is referred to as the "Correcting Adjustment."

At the request of OTA, the format of the IRS Quarterly Certifications used to make correcting adjustments to the Highway Trust Fund was changed. This change led to a misinterpretation of the information provided to FMS on the IRS Quarterly Certification and resulted in a misallocation of excise taxes between the Highway Trust Fund and the General Fund in Fiscal Year 1994. This misallocation of excise taxes was corrected in Fiscal Year 1995, debiting the General Fund and crediting the Highway Trust Fund in the amount of \$1.590 billion. Procedures have been implemented to assure that future adjustments to the Highway Trust Fund occur in an accurate and timely manner.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, one of the things I always try to tell my children is you should never debate about

facts. You go look up facts, you debate about ideas, you debate about what they mean.

Our dear colleague from Montana just quoted from correspondence that, so far as I can determine in talking to the majority and the minority side, no one else has.

What I would like to propose is this—and I would like to have a copy of it. What I would like to propose is that we set this amendment aside to give all of us an opportunity to talk to the Treasury Department in the morning and ascertain exactly what the facts are so that we can debate tomorrow where we all are dealing with the same facts.

We are all, obviously, entitled to our ideas. Jefferson once said good people with the same facts are going to disagree. But what I think is important that we do is that we be certain that we are all dealing with the same facts. What I will promise my colleague is that I will, obviously, read this memo, and I will talk tomorrow to the Treasury Department to ascertain exactly what happened.

All of the documentation that I have that was made available to my office by the Department of Transportation shows that this simply was a best available estimate, which, obviously, is different now that we have additional data, as you would expect it to be. But I would certainly be willing to look at additional information from the Treasury Department. I think probably the best thing to do is to set this amendment aside and give us all an opportunity to talk to the Treasury Department to try to ascertain what the facts are. That would be my suggestion.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. 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. BUMPERS. Mr. President, to say that it is a complex issue is an understatement. I am not sure everybody on this floor fully understands what we are debating. But let me tell you what I do understand about it, and I welcome the comments of either of the managers or the author of the amendment.

We appropriate trust funds 2 years after we receive them. For instance, whatever we took in in the trust fund in 1994 is actually allocated to the States in 1996. That is my understanding. As I say, I invite anybody to correct anything I say. I just want everyone to understand what we are talking about.

So whatever the Treasury Department takes in in gasoline taxes, which is called the trust fund, in 1994, is allocated for use in 1996. So in 1994, apparently the Treasury Department made an error and took in \$1.5 billion more

than they said they were going to have, and rather than try to correct the error at the time it was made, they said, "Well, we will just save this until next year. We'll put it in the 1995 allocation."

Now, bear in mind that when you are allocating money in 1995, you are talking about money that the States are going to get in 1996, simply because we appropriate money a year in advance.

Mr. BAUCUS. Mr. President, if I might, a slight correction, 1995 is in 1997.

Mr. BUMPERS. Please feel free to interrupt.

Mr. BAUCUS. The 1995 determination affects the 1997 allocation, 2 years later.

Mr. BUMPERS. Say that again, please.

Mr. BAUCUS. The allocation made to States is determined by the receipts received 2 years earlier. So 1994 determines 1996, and the amount in the trust fund in 1995 determines 1997.

Mr. BUMPERS. You appropriate the money in 1995 for 1996, don't you?

Mr. BAUCUS. Yes.

Mr. BUMPERS. That is correct?

Mr. BAUCUS. That is correct.

Mr. BUMPERS. That is right, you allocate it 2 years later than the Treasury Department receives it. But the basic problem here is that the Treasury Department underestimated by \$1.5 billion 1994 receipts.

So when it came time to appropriate the money from the trust fund in 1995, it was appropriated, not realizing the fact that they had \$1.5 billion more than they thought they had. So this year, 1996, the States got an allocation of 1994 trust funds that was \$1.5 billion short—\$1.6 billion, to be precise.

Here is my problem. My State tells me that by the time the \$1.5 billion error had been discovered, everybody knew it, and the great State of Arkansas got less money in 1996 than we were entitled to, and we were told that we would get it made up in 1997, which is the bill we are debating here tonight, the 1997 bill.

So the 1997 money is being allocated here this evening and, lo and behold, an amendment is offered that would cause my State to be about \$6.5 million short. Now, that is not a lot of money to a very many people. However, in the State of Arkansas, \$6.5 million is a pretty good hunk of change.

So Arkansas got less money in 1996 than we were supposed to get. We did not get our share of that \$1.5 billion. And now they are taking it away from us again in 1997.

So, as I say, that is my understanding so far. And on that basis, of course, I do not have any choice but to vote against the Senator from Montana's amendment. I am hoping that a lot of other people will do likewise.

I also note that the managers of this bill would like to get this thing done tonight so they can get out of here. I

do not want to slow things up. But I would like, when all this conversation ends over here, to have somebody to comment on the things I have said, either refute the statement I made that we got less money in 1996 than we were supposed to get, or that we got more. But you should not penalize my State in 1997 and give us less money if we got penalized last year. That is what we call a double whammy. And it is not right and it is not fair.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. 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. HATFIELD. Mr. President, at 7:45 I will make a motion to table the Baucus amendment and ask for the yeas and nays at that time. I say that at this point in order to give Members due warning and opportunity to return to the Hill. And I say this. We will make no other compensation for people being off the Hill until we finish this bill tonight.

Everybody ought to be alert to the fact we may have votes at any time, and we are not going to delay a vote henceforth. But this vote will be called at 7:45. I, at that point, will make a motion to table. Mr. President, I ask unanimous consent that I be recognized at that time to make that motion.

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

Mr. HATFIELD. I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT TO ACCOMPANY H.R. 3603

Mr. HATFIELD. Mr. President, on behalf of the leader, I propound a unanimous-consent agreement adopting the conference report accompanying H.R. 3603. This has been cleared on both sides.

I ask unanimous consent that when the conference report accompanying H.R. 3603, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for Fiscal Year 1997, is received in the Senate, that it be considered as having been agreed to and the motion to reconsider be laid upon the table.

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

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1997

The Senate continued with consideration of the bill.

AMENDMENT NO. 5142

(Purpose: To transfer previously appropriated funds among highway projects in Minnesota)

Mr. LAUTENBERG. Mr. President, I ask unanimous consent to set aside the current amendment, and I send an amendment to the desk on behalf of Senator WELLSTONE and ask for its consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for Mr. WELLSTONE, proposes an amendment numbered 5142.

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

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

The amendment is as follows:

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

SEC. 4. TRANSFER OF FUNDS AMONG MINNESOTA HIGHWAY PROJECTS.

(A) IN GENERAL.—Such portions of the amounts appropriated for the Minnesota highway projects described in subsection (b) that have not been obligated as of December 31, 1996, may, at the option of the Minnesota Department of Transportation, be made available to carry out the 34th Street Corridor Project in Moorhead, Minnesota, authorized by section 149(a)(5)(A)(iii) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17; 101 Stat. 181) (as amended by section 340(a) of the National Highway System Designation Act of 1995 (Public Law 104-59; 109 Stat. 607)).

(b) PROJECTS.—The Minnesota highway projects described in this subsection are—

(1) the project for Saint Louis County authorized by section 149(a)(76) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17; 101 Stat. 192); and

(2) the project for Nicollet County authorized by item 159 of section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2056).

Mr. LAUTENBERG. Mr. President, this amendment has been cleared by both sides. We are prepared to accept it.

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

The amendment (No. 5142) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

Mr. HATFIELD. I move to table the motion.

The motion to lay on the table was agreed to.

AMENDMENT NO. 5143

(Purpose: To provide conditions for the implementation of regulations issued by the Secretary of Transportation that require the sounding of a locomotive horn at highway-rail grade crossings)