

17. I will be happy to respond to the Senator's questions.

Mr. FAIRCLOTH. I have received a number of calls and letters from North Carolina contractors concerned about this bill and its inclusion in ISTEA. As the leader knows, these companies are overwhelmingly small businesses, and they provide a large number of jobs for people in our States. However, when they think of the Federal Government and its regulators, they think of the Occupational Safety and Health Administration. Their experience with OSHA has not been good. The contractors are definitely not interested in seeing a toehold established for further regulation of this type under the guise of one-call notification. Can the leader tell me that the provisions we are talking about here will not be converted into a Federal regulatory program affecting small business?

Mr. LOTT. I can assure the Senator, most emphatically, that this will not happen. This is not a regulatory bill. The Lott-Daschle bill presumes that each State provides the legislative foundation for the one-call notification program in that State. Remember, all one-call programs are currently State programs, and this will remain unchanged. The sole aim of the bill is to encourage States to act voluntarily to improve their own State one-call programs by providing fiscal assistance for those States who want to do more.

Furthermore, this legislation does not regulate through the back door by imposing a Federal mandate on the States to modify their existing one-call programs. Rather, it makes funding available to improve these programs. To be eligible for the funding, the programs must meet certain minimum standards, but even those standards are performance-based, not prescriptive. And States will be involved in the rule-making which establishes these standards. No State has to apply for these funds if it doesn't wish to.

The bill does not preempt State law. Let me repeat that; no State law will be preempted. States continue to their responsibility for the regulations for notification prior to excavation and for location and for marking of underground facilities. Nothing in this bill changes this. States prescribe the details of one-call notification programs. This not something the Federal Government should do or is able to do effectively.

This bill is not intended to lead to a Federal regulatory program on the backs of small business. It is not intended to do this, and it will not do this.

Mr. FAIRCLOTH. I thank leader for that assurance.

Among the minimum standards required for a one-call notification program to be eligible for Federal assistance is the requirement for "appropriate participation" by all excavators and underground facility operators. "Appropriate participation" would be determined based on the "risks to pub-

lic safety, the environment, excavators and vital public services."

Contractors who visited my office see this as a loophole that could actually weaken State programs. The contractors are very concerned that the Federal Government would declare some situations to be low risk, and this would in turn encourage facility operators to seek exemptions from one-call requirements because their participation would be deemed no longer "appropriate".

Mr. LOTT. First, let me say to my colleague that I am very much in favor of encouraging Federal and State agencies put regulatory effort where the real risks are. We don't have so much money and so much desire to regulate that we can afford to spend our time and money regulating nonexistent risks. There is far too much regulating of fictitious risks going on in our economy today. So I think the emphasis on looking at actual risk is desirable. And the other side of it is that situations that pose a real risk should be covered, absolutely should be covered. We think the Lott-Daschle bill will encourage the States to look at risks that are not now covered and increase participation in one-call notification programs accordingly.

In answer to the contractors' contention, I would reply to them that the intent of this bill is to strengthen State one-call programs and not to weaken them. This is what the Congress is saying to the States with the Lott-Daschle bill: "Strengthen your programs. Strengthen your programs, and you will be rewarded."

And the Department of Transportation, which will administer this program, is saying the same thing. I recently received a letter from Secretary of Transportation Rodney E. Slater supporting the Lott-Daschle one-call notification bill. I put that letter in the RECORD of October 22. In his letter, Secretary Slater says, "safety is the Department of Transportation's highest priority."

Secretary Slater is not interested in weakening State one-call notification programs. A State that submits a grant application to the Department of Transportation with a weakened State one-call program is not going to see that application approved. The Department of Transportation will make sure of that.

Finally, the Lott-Daschle bill does not provide for a one-size-fits-all Federal determination of what constitutes a risk. Under the bill the intent is that the determination of risk will be made at the State level, where local conditions and practices can be taken into account.

This is another reason that I'm sure we don't need to be concerned about weakening State laws. States with strong laws are not going to undertake to weaken them in order to apply for a grant from the DOT under this bill. They know that DOT is trying to strengthen these laws. It just wouldn't make any sense.

A State which successfully confronted special interests and enacted a strong one-call program would be both unlikely and foolish to try to use this bill to weaken these programs. If a State were that misguided, the DOT is certain to reject their application.

This bill will mean stronger State one-call notification laws, more participation and better enforcement. That's why 15 Senators want to advance this legislation.

Mr. FAIRCLOTH. The contractors who visited my office felt that the bill is a dagger pointing at them, and that it unfairly singles out excavators as the cause of accidents at underground facilities. Can the bill be made more evenhanded?

Mr. LOTT. I believe the bill does attempt to be evenhanded. For example, finding (2) of the bill points to excavation without prior notice as a cause of accidents, but in the same phrase it includes failure to mark the location of underground facilities in an accurate or timely way as a cause as well. In truth, these are both causes of accidents, and the bill proposes to deal with both.

Both excavators and underground facilities can stand to improve performance in the area of compliance with one-call requirements. There is no intent in this bill to blame one side or the other. If the Senator believes that the bill unfairly stigmatizes contractors, I would want to right the balance, because that is not what is intended.

What we are trying to do is to set up a process where the States can address problems we all know are there. There are too many accidents at underground facilities. Let's see what we can do to improve that situation. Let's see what we can do cooperatively, underground facility operators and contractors, Federal agencies and State agencies. Let's use incentives rather than preemption and regulation. That is what this bill is trying to do.

Mr. FAIRCLOTH. I thank the leader for these clarifications.

#### BEING ON TIME

Mr. GRASSLEY. Mr. President, in the spirit of legislation I am sponsoring with Senator WYDEN, I want to make something clear. I want to make it a matter of public record that I am putting a hold on the nominations for ambassador of individuals being considered for posts in Bolivia, Haiti, Jamaica, and Belize. I am also asking to be consulted on any unanimous-consent agreements involving the Foreign Service promotion list if it should come up for consideration.

I am taking this step to make it clear to the State Department and the administration that the Congress takes the law seriously. Something the administration appears not to do. Under the law, the administration is required to submit to the Congress on November 1 of each year the names of countries that the administration will certify for

cooperation on drugs. Last year, the administration was late in submitting that list. The administration had asked for more time and we gave it to them. Although I believe 6 weeks was pushing it.

The Congress made it clear then, however, that being late was not a precedent. We gave the administration an extra month in law. And they missed that deadline. They asked for more time last year and we gave it to them. We made it clear, though, that giving more time last year was not to become an excuse for being tardy in the future.

This point seems to have gotten lost. This year, again, the administration has not submitted the list as required by the law on the date specified. And there is no indication just when or if it may arrive. This is simply not acceptable. This leisurely approach and irresponsible attitude needs an appropriate response.

It appears we need to get the administration's attention so that they will abide by the law. This needs to be done especially on a law involving drug control issues at a time of rising teenage use. In the spirit, then, of reminding the administration that we in Congress actually do mean the things we say in law, I am putting a hold on these nominations.

The countries in question have been on past lists, and therefore there is a link to my hold now. That hold will remain in place until such time as we receive the list in question. If we do not receive a timely response, I may consider adding to my list of holds.

Let me note, also, that by "timely response" I do not mean a request for more time. I mean having the list in hand. The November 1 deadline is not a closely held secret. The fact that the list is due is not an annual surprise. Or it shouldn't be. I hope that the administration will find it possible to comply with the law, late though this response now is. And that they will do the responsible thing in the future. I thank you.

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. ABRAHAM. 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 remarks of Mr. ABRAHAM, Mr. GRAMS, and Mr. D'AMATO pertaining to the introduction of S. 136 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### RECESS UNTIL 2:30

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:30 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

#### CLOTURE MOTION

The PRESIDING OFFICER. The Chair directs the clerk to report the motion to invoke cloture on the motion to proceed to the fast track legislation.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to calendar No. 198, S. 1269, the so-called fast-track legislation.

Trent Lott, Bill Roth, Jon Kyl, Pete Domenici, Thad Cochran, Rod Grams, Sam Brownback, Richard Shelby, John Warner, Slade Gorton, Craig Thomas, Larry E. Craig, Mitch McConnell, Wayne Allard, Paul Coverdell, and Robert F. Bennett.

#### VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate shall be brought to a close on the motion to proceed to S. 1269, the so-called fast track legislation?

The rules require a yea or nay vote. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 69, nays 31, as follows:

[Rollcall Vote No. 292 Leg.]

#### YEAS—69

|           |            |             |
|-----------|------------|-------------|
| Abraham   | Dodd       | Landrieu    |
| Akaka     | Domenici   | Lautenberg  |
| Allard    | Frist      | Leahy       |
| Ashcroft  | Glenn      | Lieberman   |
| Baucus    | Gorton     | Lott        |
| Bennett   | Graham     | Lugar       |
| Biden     | Gramm      | Mack        |
| Bingaman  | Grams      | McCain      |
| Bond      | Grassley   | McConnell   |
| Breaux    | Gregg      | Moynihan    |
| Brownback | Hagel      | Murkowski   |
| Bryan     | Hatch      | Murray      |
| Bumpers   | Helms      | Nickles     |
| Chafee    | Hutchinson | Robb        |
| Cleland   | Hutchison  | Roberts     |
| Coats     | Inouye     | Rockefeller |
| Cochran   | Jeffords   | Roth        |
| Collins   | Johnson    | Sessions    |
| Coverdell | Kempthorne | Smith (OR)  |
| Craig     | Kerrey     | Thomas      |
| D'Amato   | Kerry      | Thompson    |
| Daschle   | Kohl       | Warner      |
| DeWine    | Kyl        | Wyden       |

#### NAYS—31

|           |               |            |
|-----------|---------------|------------|
| Boxer     | Ford          | Sarbanes   |
| Burns     | Harkin        | Shelby     |
| Byrd      | Hollings      | Smith (NH) |
| Campbell  | Inhofe        | Snowe      |
| Conrad    | Kennedy       | Specter    |
| Dorgan    | Levin         | Stevens    |
| Durbin    | Mikulski      | Thurmond   |
| Enzi      | Moseley-Braun | Torricelli |
| Faircloth | Reed          | Wellstone  |
| Feingold  | Reid          |            |
| Feinstein | Santorum      |            |

The PRESIDING OFFICER. On this vote the yeas are 69, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

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

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

The motion to lay on the table was agreed to.

#### RECIPROCAL TRADE AGREEMENT OF 1997—MOTION TO PROCEED

The Senate proceeded to consider the motion.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, under the rule, I would like to yield 1 hour that I have to the distinguished ranking member of the Senate Finance Committee, Senator MOYNIHAN.

The PRESIDING OFFICER. If the Senator will suspend for a moment, the Senate is not in order. If Members will take their conversations off the floor? The Senator from New York.

Mr. MOYNIHAN. Mr. President, I thank the generosity of my good friend and colleague on the Finance Committee, the Senator from Nevada. He is, as ever, generous and not without a certain wisdom because this debate could be going on for a long time.

I yield the floor.

The PRESIDING OFFICER. The question is on the motion to proceed to the bill. Is there further debate?

The Senator from North Dakota.

Mr. DORGAN. Mr. President, could I clarify with the Presiding Officer the parliamentary situation? My understanding is that we are in a postcloture period of up to 30 hours debate?

The PRESIDING OFFICER. The Senator is advised we are under postcloture debate, 30 hours of consideration.

Mr. DORGAN. Might I ask the Parliamentarian how that debate will be managed and or divided? My understanding is that each Senator is allowed to speak for up to 1 hour during the postcloture period, is that correct?

The PRESIDING OFFICER. The Senator is correct. A maximum of 1 hour.

Mr. DORGAN. With the exception being that time can be provided, up to 3 hours, to managers of the bill, is that correct, if another Senator would yield his or her hour?

The PRESIDING OFFICER. The Senator is correct. Each manager and each leader may receive up to 2 hours from other Senators, and then of course with their own hour the total would be 3.

Mr. DORGAN. Would I be correct to say that in a postcloture proceeding of this type, that the manager on each side can be a manager on the same side of the issue?

The PRESIDING OFFICER. That could occur.

Mr. DORGAN. So I then ask the managers, if I might yield to them for a response, because we will be involved here in a period of discussion prior to the vote on the motion to proceed, and that discussion is a period provided for