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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, on this day designated by Congress to be a Day of Reconciliation, we confess anything which stands between us and You and between us and anyone else. We long to be in a right relationship with You again. We know the love, joy, and peace that floods our being when we are reconciled with You. We become riverbeds for the flow of the supernatural gifts of leadership: wisdom, knowledge, discernment, vision, and authentic charisma. We confess our pride that estranges us from You and our judgmentalism that strains our relationships. Forgive our cutting words and hurting attitudes toward other religions or races and people with different beliefs, political preferences, or convictions on issues. So often we are divided into camps of liberal and conservative, Republican and Democrat, and are critical of those with whom we disagree. Help us to express to each other the grace we have received in being reconciled to You. May our efforts to reach out to each other be a way of telling You how much we love You. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 4, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader is recognized.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

SCHEDULE

Mr. REID. Madam President, this morning the Senate will consider the Transportation conference report under a 60-minute time agreement. A vote on the conference report will occur today. At approximately 10:30, the Senate will resume consideration of the Railroad Retirement Act with the Daschle substitute amendment pending under postcloture conditions. There will be rollcall votes on amendments to the Railroad Retirement Act during today's session.

The Senate will recess from 12:30 to 2:15 p.m. for the weekly party conferences.

On behalf of the majority leader, I have been asked to tell everyone we appreciate the cooperation yesterday. We are moving along on the legislation. There are just a few things left we have to do before we leave for the Christmas break.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

NOTICE

Effective January 1, 2002, the subscription price of the Congressional Record will be $422 per year or $211 for six months. Individual issues may be purchased for $5.00 per copy. The cost for the microfiche edition will remain $141 per year with single copies remaining $1.50 per issue. This price increase is necessary based upon the cost of printing and distribution.

Michael F. DiMario, *Public Printer*

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of the conference report accompanying H.R. 2299, which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2299) "making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2002, and for other purposes," having met, have agreed that the House recede from its disagreement to the amendment of the Senate and the House agree to the same, with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD on November 29, 2001.)

The ACTING PRESIDENT pro tempore. Under a previous order, there will now be 60 minutes for debate.

The Senator from Washington.

Mrs. MURRAY. Madam President, I rise to bring before the Senate the conference report accompanying the Transportation appropriations bill for fiscal year 2002.

This conference agreement represents many weeks of negotiations with the House and the administration, and I am proud of the progress it will bring to our Nation's transportation system.

This conference agreement has already passed the House by an overwhelming margin of 371–11.

In total, the bill includes appropriations and obligation limitations totaling roughly $59.6 billion.

While that is about $1.5 billion more than the fiscal year 2001 level, it is approximately $400 million less than the amount passed by the Senate on August 1.

It was very difficult to pare $400 million out of the Senate bill, but we did so while carefully looking out for the needs of all of the critical agencies within the Department of Transportation as well as the Members' individual priorities.

The conference agreement provides funding levels that are equal to or higher than the operating accounts for agencies such as the Coast Guard, the FAA, and the National Highway Traffic Safety Administration.

Several important safety initiatives—that were included in the Senate bill—have been maintained, including: the hiring of new aviation safety and security inspectors, improvements to the Coast Guard's struggling search and rescue mission, and additional funding to increase seat belt use across the nation.

The bill before us also includes a full $1.25 billion in funding to launch the transportation security act, which is the aviation security bill that was enacted just a few days ago.

The act required that the revenues from its user fees be appropriated before becoming available.

The security act includes many strict deadlines for the improvement of our aviation security system.

And we expect the DOT to meet those deadlines.

That is why we worked hard to get the $1.25 billion in user fees into the hands of the Transportation Secretary in this bill as soon as possible—rather than wait for the Defense supplemental.

For highways, our bill includes $100 million more than the amount guaranteed under TEA–21.

The bill also fully funds the levels authorized under AIR–21 for the FAA's air traffic control improvements and airport grants.

When the Senate considered this bill, we spent a lot of time debating the safety of Mexican trucks entering the United States.

While the conference agreement provides the administration flexibility in implementation, it carefully follows the safety provisions of the bill that passed the Senate in August.

The safety requirements in this bill are considerably stronger than anything the administration had proposed, and anything that was presented to the Senate as an alternative during our debate this past summer.

Let me mention quickly just a few of the safety provisions in the bill.

Licenses will be checked for every driver transporting hazardous materials and for at least half of all other Mexican truck drivers every time they cross the border.

Mexican trucks will undergo rigorous inspections before they are allowed full access to our highways, and they will be reinspected every 90 days.

And trucking firms will need to demonstrate that they have a drug and alcohol testing program, proof of insurance, and drivers who have clean driving records before the first truck crosses the border.

There are many people to thank for their contributions to this bill.

The former chairman of the subcommittee and now its ranking member, Senator SHELBY has been a stalwart ally and regular contributor to our efforts.

Congressman ROGERS, the chairman of the House subcommittee is not only an outstanding chairman, he is a true Kentucky gentleman as well.

I also want to thank Representative SABO of Minnesota, the ranking member of the House subcommittee, whose leadership on the Mexican truck issue was essential to our getting an outstanding safety regimen in place.

As always, I thank Senator BYRD and Senator STEVENS for their assistance throughout the process.

I also thank the House and Senate Appropriations subcommittee staffs—along with some members of my personal staff who have worked a great many hours to bring together this conference agreement, including:

On the Senate subcommittee on Transportation appropriations, for the majority: Peter Rogoff, Kate Hallahan, Cynthia Stowe, and Angela Lee;

For the minority: Wally Burnett Paul Doerrer, and Candice Rogers,

On the House subcommittee on Transportation appropriations, for the majority: Rich Efford, Stephanie Gupta, Cheryle Tucker, Linda Muir, and Theresa Kohler;

For the minority: Bev Pheto;

On the chairman personal staff, Rich Desimone and Dale Learn;

On the Senate Commerce, Science, and Transportation Committee, Debbie Hersman.

I thank all these people who spent a lot of time helping us to get to this point. I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. SHELBY. Madam President, I yield myself as much time as I consume.

I rise in support of the fiscal year 2002 Transportation appropriations conference report before the Senate this morning. While I do not support every item, policy, program, or initiative in the conference report or statement of managers, I do support the package reported overwhelmingly from the conference committee and as just described by the Senator from Washington.

This is the first year the Senator from Washington is chair of the Transportation Appropriations Subcommittee, and I believe that she has accounted herself well on this bill. This is a balanced bill.

Clearly, the Mexican truck issue reflects that balanced approach. I believe that the Senator from Washington did an admirable job of managing this issue through a lengthy debate on the Senate floor and through the conference committee negotiations with the House and the administration.

The resolution of the Mexican truck issue allows for the safe opening of the border to Mexican trucks with appropriate inspections, oversight, and audits of Mexican-domiciled trucks and trucking companies. This compromise kept the focus on truck safety and security at our border and never lost sight of the need to work with the administration and the House to forge a workable solution.

Our approach on this issue was always to move the debate forward and allow a resolution based on safety standards rather than prohibiting any action by the department to manage the truck safety issues we face at our southern border. I think the conference report treatment of this matter meets that test.

The FAA, the Coast Guard, and the Department's new Transportation Security Agency are all adequately, if not generously, funded in this bill. The funding levels match the AIR 21 levels for the FAA's two capital accounts, and the funding for FAA operations meets the President's budget request.

Accordingly, the conference report meets the TEA 21 transit funding levels and increases the obligation limitation for highways above the TEA 21 firewalled levels. This funding commitment recognizes the priorities our colleagues in the Senate place on these accounts.

This is not only the first year of the Senator from Washington as the chair of this subcommittee, it is also the first year that Peter Rogoff has assisted her on the bill as the majority clerk. The committee and the Senator from Washington were both well served by Peter Rogoff—and his staff, Kate Hallahan, and Coast Guard Commander Cyndi Stowe.

I also commend Wally Burnett and Paul Doerrer of my staff on the committee. They worked hand in hand with the Democrats. I believe that is why we are where we are today, on the verge of adopting this conference report.

I urge all of my colleagues to support the conference report and send it to the President for his signature, with the type of overwhelming margin we saw in the other body of a 371-to-11 vote on the adoption of this report.

I reserve the remainder of my time and yield the floor.

Mr. BYRD. Mr. President, the Senate has now turned to consideration of the conference report accompanying the Transportation and Related Agencies Appropriations Act for Fiscal Year 2002. The bill includes a combination of appropriations and obligation limitations totaling $59.643 billion. That is $1.526 billion or 2.6 percent higher than the level provided for fiscal year 2001.

This is the ninth of the thirteen appropriations conference reports to come before the Senate. It is the ninth conference report that is within its 302 (B) allocation and it is fully consistent with the $686 billion bipartisan budget agreement on discretionary spending for the thirteen bills.

When the President signed the Transportation Equity Act for the 21st Century, he placed into law a provision I and my colleague from Texas, Senator GRAMM, championed here in the Senate. That provision served to guarantee that we appropriate every year on our Nation's highway system the funds that are received into the Highway Trust Fund through fuel taxes at the pump. I'm pleased to say that this year's Transportation bill, like every Transportation bill enacted since TEA–21, honors that commitment. Indeed, this year, for the first time since 1998, the Transportation bill provides more money for highways than was assumed in the highway guarantee—$100 million more. This is made possible since we still have an unobligated balance in the trust fund that existed before TEA–21 was enacted. So I commend the managers of the bill, Senators MURRAY and SHELBY, for making this significant investment in our Nation's highway infrastructure which is very much in need of repair, restoration, and expansion.

As long as I have had the pleasure of serving on the Transportation Subcommittee, it has always operated in an open and bipartisan manner. I am pleased to see that this tradition has continued under the leadership of Senator MURRAY. She and Senator SHELBY have cooperated on all aspects of this bill. Both of them were required to take on the very contentious issue regarding the safety risks of Mexican trucks traveling on our highways. We debated that issue for several days here in the Senate and took a total of three cloture votes during that debate. Senators MURRAY and SHELBY stood their ground on the floor of the Senate and they prevailed. They then went to conference and negotiated a compromise with the House that maintains the strong safety requirements passed by the Senate but eliminates the threat of a veto against this bill.

I commend both managers and their respective staffs for a job well done and I encourage all members to support the conference report.

Mr. BAUCUS. Mr. President, I rise today to voice my concern regarding an element on the Fiscal Year 2002 Transportation Appropriation Conference Report. While I believe that this report, for the most part, spends funding according to statute and aids our Nation's transportation system, I am very concerned about the distribution of a major funding category.

The Transportation Equity Act for the 21st Century, TEA 21, was passed by the Congress in 1998 by overwhelming margins. For the first time receipts into the Highway Trust Fund were guaranteed to be spent for transportation purposes. This is accomplished through the annual calculation of Revenue Aligned Budget Authority, RABA, which makes adjustments in obligations to compensate for actual receipts into the Trust Fund versus the estimated authorization included in TEA 21 for the fiscal year.

While I am pleased that the Appropriations Committee has upheld the firewalls in this conference report, I find the redistribution of RABA funds to be unacceptable. Under TEA 21, RABA funds are to be distributed proportionately to the States through formula apportionments and also to allocated programs. This conference report is a radical departure from that and is a cause for great concern. States receive less money in this conference report than is called for under TEA 21. For that reason, this conference report is in violation of TEA 21.

I am dismayed to have to voice my concern regarding an otherwise beneficial transportation bill. However, as an author of TEA 21 and a believer in its principles, I am saddened to see TEA 21 violated at the expense of the States.

Mr. SMITH of New Hampshire. Mr. President, I rise to speak about the transportation appropriations conference report.

First, I wish to commend the Appropriations Committee members for their determination to protect our highways from unsafe Mexican trucks.

I am not eager for trucks to freely cross from Mexico into the United States, for many reasons, but I am pleased that these trucks will at least be required to pass a safety compliance review.

The remainder of my comments have to do with the portion of the conference report that funds the Federal-aid highway program.

As the ranking member of the Environment and Public Works Committee, with authorizing jurisdiction over the highway program, I am pleased with the overall funding level for Federal-aid highways.

As my colleagues will recall, one of the major accomplishments of TEA–21, passed by Congress in 1998, was that for the first time, gas tax revenues into the Highway Trust Funds were guaranteed to be promptly returned to the States for transportation spending.

This guarantee is accomplished with a provision in TEA–21 called Revenue Aligned Budget Authority, or RABA as it is known.

RABA calculations compare actual gas tax receipts to our 1998 estimates, and guaranteed funding will go up or down depending on whether we have more or less revenue in the Highway Trust Fund than TEA–21 anticipated.

Reflecting several years of a strong economy, gas tax receipts have been billions of dollars more than we anticipated in 1998.

This year, as guaranteed by TEA–21, the Federal-aid highway program is funded at almost $33 billion ($32.954 billion); an increase of about $1.2 billion over last year; which includes $4.5 billion from RABA funds.

As I said, I am pleased with the success of these funding guarantees.

But I am concerned about the diversion of over $1.5 billion to project earmarks instead of being distributed fairly under formulas developed in TEA–21.

There are 590 project earmarks from the Highway Trust Fund, and 55 more highway projects taken from the general fund.

I want to alert my colleagues to such extensive earmarking contained in this appropriations report.

This earmarking is mostly within discretionary programs created in TEA–21 and mostly funded with the RABA funds.

Almost a billion dollars in RABA funds are diverted away from the fair distribution that we agreed to in TEA–21, and are used for earmarks in this conference report.

This money does not get distributed evenly as authorized in TEA–21, but there are winners and losers.

Some States get a lot of this money for projects, some get very little.

This process completely distorts the funding formulas we agreed to in TEA–21.

It also distorts the discretionary programs we created in TEA–21 for projects that meet specified criteria.

For instance, one pilot program we created to fund local projects that link transportation and community needs, for instance, was authorized in TEA–21 at $25 million per year.

This year, that program has become the catch-all for project earmarks, with a total of 219 projects at a cost of $276 million.

This is incredible that a small discretionary program has grown to an earmarking account at over 10 times the authorized amount.

The Appropriations Committee began earmarking these TEA–21 accounts a few years ago, over strong objections from the authorizing committees, and the practice has grown exponentially each year.

Indeed, the Appropriations Committee has begun the practice of soliciting project requests, creating a terrible dilemma where the number of projects that Members submit far exceed any authorized amounts.

And now Members have no choice but to compete for these discretionary funds in the appropriations process.

I admit to requesting projects for my State that received funding only because the pot of money grew so large, again from $25 million to $276 million.

The Appropriations Committee has gone further now than in recent years toward making so many transportation project funding decisions.

I believe strongly that State and local agencies are responsible for transportation planning and funding decisions.

I much prefer to send Highway Trust Fund dollars back to the States and I do not think Congress should pick and choose projects.

Where any fault for this situation rests with the framework in TEA–21, we will address it in the reauthorization of TEA–21.

Next year the Environment and Public Works Committee will begin hearings on reauthorization, and I know that there is a lot of concern about this earmarking process.

I will vote in favor of this conference report for the good it contains, but I am compelled to register my strong objections to the hundreds of highway projects that do not belong in an appropriations bill.

Mr. SARBANES. Mr. President, I want to take a moment while the transportation appropriations conference report is pending before us to express my concern, as chairman of the Senate Banking Committee, which has jurisdiction over the Federal transit laws, about a provision in that report that attempts by report language to rewrite established law by reducing the Federal match for New Start transit projects from 80 percent to 60 percent. I am referring to language in the conference report that would ''direct [the Federal Transit Administration] not to sign any new full funding grant agreements after September 30, 2002 that have a maximum federal share of higher than 60 percent.'' The Senate Banking Committee will begin to consider transit reauthorization issues next year. In the meantime, we have not had the benefit of any hearings or other public debate on this issue that would justify such report language.

Over 200 communities around the country, in urban, suburban, and rural areas, are considering light rail or other fixed guideway transit investments to meet their growing transportation needs. Recognizing this increasing demand, Congress in 1998 passed the Transportation Equity Act for the 21st Century, which authorized almost $8.2 billion over 6 years to fund these New Starts projects.

The process for evaluating and awarding a Federal grant under the New Starts program is laid out in the Federal transit laws, found in section 5309 of Title 49, United States Code. Section 5309(h) specifies that ''[a Federal] grant for [a New Starts] project is for 80 percent of the net project cost, unless the grant recipient requests a lower grant percentage.'' By including language in the conference report—not in the statute—directing the FTA not to sign new full funding grant agreements after September 30, 2002 with a Federal share greater than 60 percent, the conferees are seeking to direct the FTA to act contrary to existing law.

Efforts to alter the Federal share would disrupt the level playing field established when the Intermodal Surface Transportation Efficiency Act—ISTEA—set forth the 80 percent Federal cap for both highway and transit projects. ISTEA created a funding system by which communities could choose between transportation modes based on local needs, not based on the amount of Federal money available for the project. Seeking to lower the Federal match for transit projects while keeping the available highway match at 80 percent has the potential to skew the dynamics of choice for local communities.

It is true that there is very strong demand for New Starts funding. This is an issue which will be thoroughly considered as the transit laws are reauthorized in less than two years' time. Given the importance of the New Starts program to communities around the country, any proposal for dealing with this issue should be thoroughly considered. Report language directions to the FTA to act contrary to existing law are not a constructive contribution to this thorough consideration.

BUS REPLACEMENT

Mr. HARKIN. Mr. President, the conference report indicates that $5 million is provided for bus replacement in Iowa. But, it is my understanding that the intent was to allow these funds which have been allocated in a collaborative process involving the Iowa DOT and the local transit authorities to be used for bus replacement, bus expansion and for facility and equipment costs.

Mrs. MURRAY. Mr. President, the Senator from Iowa is correct regarding the allocation of these funds. The intention is that the funds may be used for the authorized purposes that you noted.

FUNDING OF TRANSPORTATION SECURITY IMPROVEMENT MEASURES

Mr. LIEBERMAN. I say to Senator MURRAY, I would like to confirm my understanding that between the funding you have included in the conference report for the Transportation Security Administration and the funding included in the bill for the Federal Aviation Administration's research, engineering and development, there are sufficient funds for the expanded use of existing technology and research and development of new technology to improve aviation security. Is that correct?

Mrs. MURRAY. The Senator is correct. The funds appropriated are intended to cover those costs.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SHELBY. Madam President, I suggest the absence of a quorum.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator will withhold.

Mrs. MURRAY. I ask the Senator to ask the time be equally divided and request he retain the remainder of the time of the chairman and ranking member toward the end.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Madam President, for the information of all Members, the majority leader has indicated that the vote on this matter will occur at 12:30 today.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Without objection, the quorum call will be charged as previously specified.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Madam President, how much time am I allowed?

The ACTING PRESIDENT pro tempore. The Senator has 8 minutes.

Mr. DORGAN. Madam President, I shall not take all 8 minutes. I understand there is a long line of people wishing to speak on this conference report later.

First of all, I compliment the chairman and ranking member from the Senate side. I think they have done an extraordinary job on the conference report. I appreciate the work they have done on a range of issues. I think the Senate owes them a debt of gratitude.

I could spend some long period of time talking about the important provisions in this Transportation conference report. I know it took a long while to get to this point. Senator MURRAY, chairing the subcommittee on the Senate side, and others who have worked on this bill for some length of time undoubtedly wish this had been completed much earlier, but there were a series of things that prevented it from happening. In any event, at the end of this session we have a conference report that contains a lot of important items for this country's transportation system. I compliment Senator SHELBY and Senator MURRAY and thank them for their work.

I do want to say—and I will say it briefly—there are two items in the conference report that provide some heartburn for me. The conference was required—or forced, I guess—to accept a provision dealing with the spending of $400,000 to put airport signs up that describe National Airport really as Reagan National Airport. This conference report, because the House insisted, requires the Metro Airport Authority to spend $400,000 changing signs so that people will not be confused that they are at the airport when, in fact, the signs now say ''National Airport.''

George Will had a little something to say about that in a piece in April of this year. He said:

> Travelers too oblivious to know they are at an airport, when large, clear signs say they are, should be given those little plastic pilot wings that are issued to unaccompanied children taken into protective custody. The conservatives want to get Congress to order Metro officials to spend several thousand dollars to add Reagan's name to the station signs and all references to the station on the maps.

He is talking about the station at the Metro stop.

He said:

> Reagan had a memorable thing or two to say about bossy Federal institutions meddling in local affairs.

I want to make the point that the House of Representatives has insisted on this for some long while. I regret they forced their will into this conference. I think it is a waste of $400,000 that probably could have better been used, if the House had thought clearly about this, for security.

We have a range of security needs, given post-September 11, on a range of transportation systems. I would have much rather seen, if the $400,000 is to be spent, that it be spent on Metro security. I know the Senators from Washington and Alabama share my concern about that.

Let me make one additional point, and that is on the issue of Mexican trucks. The House of Representatives had a provision that actually prohibited the Mexican trucks from coming into this country beyond the 20-mile limit. The Senate provision was not as strong but was a pretty good provision. I would have preferred a stronger provision. The provision that came out of conference is weaker than both.

I understand the work that Senator MURRAY and Senator SHELBY did. I am not here to criticize their work. I respect the work they did in conference to try to resolve this issue. They make the point—and it is an accurate point—that this is a restriction on funding for 1 year during the appropriations year. So this issue will not be concluded with this judgment in this conference committee. This issue will be a part of the interests of the authorizing committee, oversight by this subcommittee, and also will be a part of the interest of others of us in the Congress who still believe it will be unsafe to have any wholesale movement of Mexican trucks beyond the 20-mile border limit.

It is interesting to me that we now have a limitation on the movement of Mexican trucks in this country, and yet Mexican truck drivers with Mexican trucks have been apprehended in North Dakota, which, of course, is significantly beyond the 20-mile limit from the Mexican border. And it is true they have been apprehended in a good many other States as well.

We have a lot of difficulties, problems, and concerns trying to merge two different kinds of economies with respect to transportation, two different kinds of systems dealing with short- and long-haul trucks, and two different safety standards, different standards with respect to both drivers and trucks.

I wish we had in fact had the House position, which originally came to conference with a prohibition until adequate safety standards were in place and adequate inspection opportunities were in place. That, regrettably, is not the case. And I am not here to suggest that our two Senators—Senator MURRAY and Senator SHELBY—in any way weakened this provision. I am here to say the conference itself forced that weakening. I think that will not and cannot be the last word on this subject. Those on the authorizing committee and those of us who will return to this subject in the appropriations process next year will have more to say.

But having spoken on both of those issues, let me again say to my colleague, Senator MURRAY, and my colleague, Senator SHELBY, they operate in good faith and do an extraordinary job. They run a subcommittee that is very important to this country, especially again in relation to post-September 11, the issue of transportation, the security of our transportation systems in the country.

Our transportation industry is so important to this country's economy. There is no way you can overstate it. The appropriations bill offered to us today by Senators MURRAY and SHELBY is an appropriations bill that I think the Senate will want to approve. This conference report will get the Senate's approval today.

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

The ACTING PRESIDENT pro tempore. If the Senator will withhold, the Chair recognizes the Senator from Washington.

Mrs. MURRAY. Madam President, I ask unanimous consent the time be divided as before.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, I understand under the UC I have 15 minutes; is that correct?

The PRESIDING OFFICER. The time has been reduced by a series of quorum calls. The Senator has 6 minutes.

Mr. MCCAIN. Six minutes. Mr. President, I ask unanimous consent I be granted 4 additional minutes.

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

Mr. MCCAIN. Mr. President, I wish to express my strong opposition to the conference agreement on H.R. 2299, the fiscal year 2002 Transportation appropriations bill approved by the House and Senate conferees last week.

I once again find myself in a position in which I must express strong concerns with yet another appropriations bill. This measure, like the eight appropriations bills approved by the Congress this year and like so often has been the case during recent years, continues what I believe is an inappropriate overreach by the appropriators in an effort to fulfill their own agendas at the expense of both current law and the work of the authorizers.

They again are redirecting programmatic funding, funding that in many cases is authorized to be distributed by formula or at the discretion of the Secretary and based on competitive merit.

Instead of allowing the normal funding distribution process to go forward, the appropriators have earmarked that funding for pet projects for the members of the Appropriations Committee.

Before citing a host of examples of the pork barrel spending associated with this conference report, I want to first address the very important trade issue that the appropriators have tied to the pending measure, that is, the North American Free Trade Agreement, NAFTA.

As my colleagues well know, provisions in both the House and the Senate versions of the Transportation appropriations bill proposed to restrict the administration's ability to abide by our obligations under NAFTA. As a result of this fact, the Statement of Administrative Policy included a very clear and direct veto threat stating that "the Senate Committee has adopted provisions that could cause the United States to violate our commitments under NAFTA. Unless changes are made to the Senate bill, the President's senior advisors will recommend that the President veto the bill."

Several of us also strongly objected to the appropriators' actions. As a result, we spent considerable floor time—nearly two full weeks in July—discussing the importance of NAFTA and our obligation to abide by our commitments to our trading partners.

At no time has the senior Senator from Texas or I argued that safety concerns were not of considerable importance in this debate. In fact, it was our proposal offered as an alternative to the Senate version that first called for an inspection of every Mexican truck similar to the model used in the State of California at the border.

Indeed, the proponents of NAFTA have had one goal since this issue surfaced in the DOT appropriations legislation this summer. From the beginning, our goal has been to ensure the appropriators did not succeed in their attempts through the DOT appropriations bill to effectively alter our solemn agreement with our neighbors to the South. If our trading partners are subject to the whimsical mood of the appropriators, how can we ever expect any nation that we have executed a trade agreement with, or one we are seeking to enter into trade agreements with, to have any faith that our word is true and we will abide by our agreements? If the appropriators' agenda had prevailed, I shudder to consider the consequences and the impact as we attempted to seek to negotiate new trade agreements or renewed ones.

After receiving assurances from the ranking member of the Appropriations Committee that he would work with the administration to ensure the conference agreement would not include any provisions that would prevent use from abiding by our NAFTA commitments, the senior Senator from Texas and I agreed to forgo some of our procedural rights and allowed the bill to go to conference without several additional votes and the expenditure of additional floor time. While early into the conference the Senate managers of the bill issued a release indicating a determination to provoke a Presidential veto, the appropriators finally agreed last week to incorporate provisions agreeable to the administration.

Upon hearing of the agreement with respect to Mexican trucks last week, I raised reservations over some of the provisions that I felt could be troublesome. However, in response to these concerns, the administration has assured us the agreement is not in violation of NAFTA. Last Friday, November 30, the White House issued the following statement of the President:

The compromise reached by the House and Senate appropriators on Mexican trucking is an important victory for safety and free trade. We must promote the highest level of safety and security on American highways while meeting our commitments to our friends to the South. The compromise reached by the conferees will achieve these twin objectives by permitting our border to be opened in a timely manner and ensuring that all United States safety standards will be applied to every truck and bus operating on our highways.

Moreover, I have received a letter from U.S. Trade Representative, Robert Zoellick, which states:

The Administration supports the agreement reached by the House and Senate appropriators on Mexican trucking as fully promoting highway safety and U.S. trade commitments. In addition, it will permit the United States to meet the commitments made to Mexico as part of the North American Free Trade Agreement.

I ask unanimous consent a copy of that letter be printed in the RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT, THE UNITED STATES TRADE REPRESENTATIVE,
Washington, DC.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I am writing to convey the Administration's views on Section 350 of H.R. 2299, the Department of Transportation's appropriations bill for fiscal year 2002.

The Administration supports the agreement reached by the House and Senate appropriators on Mexican trucking as fully promoting highway safety and U.S. trade commitments. In addition, it will permit the United States to meet the commitments made to Mexico as part of the North American Free Trade Agreement.

Sincerely,

ROBERT B. ZOELLICK.

Mr. MCCAIN. Additionally, I note the conference report does include additional funding to address the many safety related enforcement requirements concerning Mexican carriers and drivers. While much of my statement today will express disagreement to the actions of the appropriators, in this case I want to note for the record that they have worked to provide sufficient funding to allow DOT to carry out the requirements with respect to the Mexican trucking issue and enable the border to be opened in a time-frame deemed appropriate by the administration.

Mr. President, enactment of this legislation will not be the end of our due-diligence to ensure we are allowed to open the border to Mexican carriers and in turn, allow American carriers to do business in Mexico. I intend to stay vigilant on this very important issue and will monitor the administration's actions with respect to the border opening in my capacity as ranking member of the Senate Committee on Commerce, Science, and Transportation. I remain committed to doing all I can to ensure the border is open consistent with our obligations under NAFTA while protecting the safety of the American traveling public.

Mr. President, this is a bittersweet victory for highway safety and free trade. On the one hand the United States will be allowed to keep its promise to abide by its solemn treaty. Yet on the other hand, the egregious process of pork barrel earmarking continues. Unless you are from a state with a member on the Appropriations Committee, your State's transportation dollars most likely will be reduced by enactment of this bill which in many cases redirects authorized funding programs for the sake of the home-state projects of the appropriators.

I recognize that there are very important provisions in the legislation, sections that appropriate funds for programs vital to the safety and security of the traveling public and our national transportation system over all. Yet despite that necessary funding, and the fact that the legislation is not in violation of NAFTA, it once again goes overboard on pork barrel spending.

It is so bad, in fact, yesterday's Wall Street Journal included an article highlighting the very egregious actions of the appropriators to reduce state transportation dollars and direct those funds to earmarked projects. The article is entitled "Bill Gains To Cut State-Controlled Highway Funds." I ask unanimous consent that the article be printed in the RECORD.

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

BILL GAINS TO CUT STATE-CONTROLLED HIGHWAY FUNDS

(By David Rogers)

WASHINGTON.—In a total display of patronage politics, Congress is poised to remove nearly $450 million of federal highway aid from state control to instead spend the money on road projects selected by lawmakers.

The appropriations leadership added the provision to a $59.6 billion transportation budget for fiscal-year 2002 that was filed just before dawn Friday and rushed through the House hours later, where it passed 371–11. Tight limits on Senate debate all but ensure final passage this week, despite complaints that lawmakers are tampering with funding formulas laid out in the 1998 highway act.

Until the dust settles, it is difficult to say precisely how individual states will fare, but three—Kentucky, Alabama, and West Virginia—are clear winners. Rep. Hal Rogers (R., Ky), who led the House negotiators, engineered the arrangement and used it to corral extra dollars for his state. Alabama had three votes at the negotiating table, including Sen. Richard Shelby, the Senate's top GOP negotiator. West Virginia needed only one, Sen. Robert Byrd, chairman of the Appropriations panel and a master at capturing highway money for his rural state. Among the four largest earmarked highway accounts, Kentucky, West Virginia and Alabama are promised $211 million, almost a fifth of the $1.1 billion total.

Never before has the Appropriations leadership gone so far in tampering with the 1998 highway act, which was built on the premise that federal gas-tax receipts should be returned quickly to the states regardless of other federal spending priorities. The act even created a mechanism to adjust authorized highway funding upward as revenue rose. In recent years, that pot of money—identified by the title Revenue Aligned Budget Authority, or RABA—has exploded, reaching $4.5 billion this year.

Under the highway law, $3.95 billion was to be apportioned among the states this year with the remaining $574 million going to about 40 highway programs authorized in the highway act and administered through the Transportation Department. The bill would cut the state share to $3.5 billion and combine the extra $450 million with the $574 million, creating a $1 billion-plus pot.

The negotiators made wholesale changes in the priorities set in the highway act, substituting projects they favor for the ones preferred by the House and Senate transportation committees that wrote the highway law. A $25 million community-preservation pilot program, for example, ballooned to $276 million, with virtually each dollar earmarked as to where it should be spent.

The Bush administration had opened the door by proposing changes in how RABA dollars are distributed. Negotiators said the $3.5 billion apportioned to the states narrowly exceeds the amount proposed in the president's budget, and an additional $100 million has been added elsewhere to core highway funds available to the states. There is little doubt the deal was driven by pork-barrel politics. There were bitter fights over unsuccessful Republican attempts to deny money for vulnerable Democrats in conservative House districts in Mississippi and Arkansas.

The bill would impose a much tougher safety regimen than the White House had wanted for Mexican trucks that are due to begin operating in the U.S. next year. The Transportation Department expects to meet the requirements and open the border by the spring—just a few months later than planned. But the final settlement is a personal victory for Rep. Martin Salo (D., Minn.) and Sen. Patty Murray (D. Wash.), the two managers of the bill who had insisted lawmakers must consider safety.

For Sen. Byrd, there will be more at stake than the transportation bill. The West Virginia Democrat will be at center stage again this week, which he is expected to force Senate roll calls on adding more money for homeland security to a pending Pentagon budget. Though the White House should win an early procedural vote, Sen. Byrd appears prepared to confront Republicans with the choice of accepting the money or pulling down the entire military budget.

Mr. McCAIN. Mr. President, I ask my colleagues, how much longer are we going to let the appropriators subordinate the jurisdiction and responsibilities of the authorizers? Didn't most of us think the multi-year highway funding legislation, known as TEA–21, would essentially be the law of the land through fiscal year 2003 with respect to highway funding formulas and state apportionments? I guess we were wrong, given the appropriations reprogramming maneuvers.

Let me again quote from the Wall Street Journal: ''The negotiators made wholesale changes in the priorities set in the highway act, substituting projects they favor for the ones preferred by the House and Senate transportation committees that wrote the highway law.'' This is precisely why no projects should be earmarked by either the authorizers or the appropriators and we should instead allow the states to fund the projects that meet the legitimate transportation needs of their states.

Mr. President, the Revenue Aligned Budget Authority—RABA—funds mentioned in the article are to be distributed proportionately to the states through formula apportionments and to allocated programs. This conference report represents a fundamental departure from that approach.

To pay for some of the report's many earmarks, $423 million will be redirected from state apportionments, meaning the states lose 10.7 percent of RABA funds from the regular formula program. Further, another $423 million will be redistributed from allocated programs in a manner in which the appropriators have selected programmatic winners and losers. In fact, 24 of 38 highway funding programs will receive none of the funding under RABA they were to receive before the appropriators' stroke of pen. But again, if you have the good fortune to reside in a state with a member in a leadership position on the DOT Appropriations Subcommittee, you are among the winners in this appropriations bill lottery. I ask unanimous consent that two charts prepared by the Federal Highway Administration to show the impact on each state and the allocated programs through the RABA redistributing work of the appropriators be printed in the RECORD at this point.

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

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION—ESTIMATED RABA DISTRIBUTION

Federal-aid highway programs	TEA–21	Conference	Difference
Apportioned Programs	3,968,764,800	3,545,423,946	(423,340,854)
Allocated Programs:			
Federal Lands Highways Program:			
Indian Reservation Roads	36,050,486	36,565,651	(484,835)
Public Lands Highways	32,249,049	31,815,091	(433,958)
Park Roads and Parkways	21,631,440	21,339,391	(292,049)
Refuge Roads	2,624,255	2,586,593	(37,662)
National Corridor Planning & Devel. & Coord. Border Infrastructure Pg	18,633,932	352,256,000	333,622,068
Construction of Ferry Boats and Ferry Terminal Facilities	5,059,012	25,579,000	20,519,988
National Scenic Byways Program	3,393,730	3,348,128	(45,602)
Value Pricing Pilot Program	1,464,300	0	(1,464,300)
High Priority Projects Program	236,671,037	0	(236,671,037)
Highway Use Tax Evasion Projects	666,113	0	(666,113)
Commonwealth of Puerto Rico Highway Program	14,642,998	0	(14,642,998)
Woodrow Wilson Memorial Bridge	29,946,366	0	(29,946,366)
Miscellaneous Studies, Reports, & Projects	2,503,665	0	(2,503,665)
Magnetic Levitation Transp. Tech. Deployment Program	0	0	0
Transportation and Community and System Preservation Pilot Program	3,324,822	251,092,600	247,767,778
Safety Incentive Grants for Use of Seat Belts	14,907,146	0	(14,907,146)
Transportation Infrastructure Finance and Innovation	15,969,481	0	(15,969,481)
Surface Transportation Research	13,442,846	0	(13,442,846)
Technology Deployment Program	5,989,273	0	(5,989,273)
Training and Education	2,526,635	0	(2,526,635)
Bureau of Transportation Statistics	4,128,751	0	(4,128,751)
ITS Standards, Research, Operational Tests, and Development	13,976,885	0	(13,976,885)
ITS Deployment	15,969,481	0	(15,969,481)
University Transportation Research	3,525,804	0	(3,525,804)
Emergency Relief Program	13,310,772	0	(13,310,772)
Interstate Maintenance Discretionary	13,310,772	76,025,000	62,714,228
Territorial Highways	4,846,545	0	(4,846,545)
Alaska Highway	2,503,665	0	(2,503,665)
Operation Lifesaver	68,908	0	(68,908)
High Speed Rail	700,567	0	(700,567)
DBE & Supportive Services	2,664,451	0	(2,664,451)
Bridge Discretionary	13,310,772	62,650,000	49,339,228
Study of CMAQ Program Effectiveness	0	0	0
Long-term Pavement	0	10,000,000	10,000,000
New Freedom Initiative	0	0	0
State Border Infrastructure	0	56,300,000	56,300,000
Motor Carrier Safety Grants	24,221,241	23,896,000	(325,241)
Public Lands Discretionary	0	45,122,600	45,122,600
Subtotal, allocated programs	574,235,200	997,576,054	423,340,854
Total	4,543,000,000	4,543,000,000	

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION—DISTRIBUTION OF ESTIMATED FY 2002 REVENUE ALIGNED BUDGET AUTHORITY

States	TEA–21	Conference	Difference
Alabama	78,660,918	70,270,303	(8,390,615)
Alaska	47,506,115	42,438,725	(5,067,390)
Arizona	71,794,955	64,136,719	(7,658,236)
Arkansas	50,998,628	45,558,698	(5,439,930)
California	357,228,521	319,088,155	(38,140,386)
Colorado	51,633,630	46,125,966	(5,507,664)
Connecticut	59,372,721	53,039,542	(6,333,179)
Delaware	18,097,567	16,167,133	(1,930,434)
Dist. of Col.	15,517,870	13,862,608	(1,655,262)
Florida	187,841,638	167,804,915	(20,036,723)
Georgia	141,803,966	126,677,998	(15,125,968)
Hawaii	20,042,262	17,904,391	(2,137,871)
Idaho	28,813,232	25,739,778	(3,073,454)
Illinois	129,699,234	115,864,455	(13,834,779)
Indiana	91,837,217	82,041,110	(9,796,107)
Iowa	46,752,049	41,765,094	(4,986,955)
Kansas	45,442,357	40,595,104	(4,847,253)
Kentucky	68,342,130	61,052,200	(7,289,930)
Louisiana	61,436,479	54,883,163	(6,553,316)
Maine	20,796,328	18,578,021	(2,218,307)
Maryland	64,532,116	57,648,593	(6,883,523)
Massachusetts	71,715,580	64,065,811	(7,649,769)
Michigan	126,563,909	113,063,570	(13,500,339)
Minnesota	57,110,525	51,018,651	(6,091,874)
Mississippi	50,720,814	45,310,518	(5,410,296)
Missouri	90,924,402	81,225,663	(9,698,739)
Montana	40,640,152	36,305,141	(4,335,011)
Nebraska	31,472,305	28,150,666	(3,321,639)
Nevada	28,932,295	25,846,141	(3,086,154)
New Hampshire	19,605,698	17,514,394	(2,091,304)
New Jersey	100,687,563	89,947,406	(10,740,157)
New Mexico	38,735,144	34,603,338	(4,131,806)
New York	197,128,548	176,101,207	(21,027,341)
North Carolina	111,046,039	99,200,962	(11,845,077)
North Dakota	26,630,412	23,789,795	(2,840,617)
Ohio	136,327,071	121,785,313	(14,541,758)
Oklahoma	60,722,101	54,244,986	(6,477,115)
Oregon	46,434,548	41,481,460	(4,953,088)
Pennsylvania	186,849,447	166,918,559	(19,930,888)
Rhode Island	24,050,715	21,485,269	(2,565,446)
South Carolina	67,429,314	60,236,753	(7,192,561)
South Dakota	27,979,792	24,995,239	(2,984,553)
Tennessee	89,614,709	80,055,673	(9,559,036)
Texas	310,674,910	277,535,786	(33,139,124)
Utah	30,202,300	26,980,676	(3,221,624)
Vermont	18,375,381	16,415,313	(1,960,068)
Virginia	103,703,824	92,641,928	(11,061,896)
Washington	68,461,193	61,158,563	(7,302,630)
West Virginia	41,711,718	37,262,406	(4,449,312)
Wisconsin	77,986,228	69,667,581	(8,318,647)
Wyoming	28,178,230	25,172,507	(3,005,723)
Subtotal	3,968,764,800	3,545,423,946	[1](423,340,854)
Allocated Programs	574,235,200	997,576,054	423,340,854
Total	4,543,000,000	4,543,000,000	0

[1] Represents (−10.7%).

Mr. McCAIN. In addition to the RABA funding shell game, host of other actions by the appropriators merit concern. For example, section 330 of the conference report appropriates $144 million in grants for surface transportation projects while the Statement of Managers then earmarks the entire allotment for 55 projects in 31 States. I should point out that the Senate-passed version of the appropriations bill provided $20 million for these grants, not a dime of which was earmarked, while the House bill did not appropriate any funding for such grants. But through the will of the conferees, the level of funding for surface transportation projects grants are increased by $124 million and the conferees have recommended earmarks for every penny of the grant funding instead of allowing it to be made available for distribution on a competitive or meritorious basis.

Examples of these earmarks included in the Statement of Mangers include: $1.5 million for the Big South Fork Scenic Railroad enhancement project in Kentucky; $2 million for a public exhibition on ''America's Transportation Stories'' in Michigan—this sounds like a very critical and legitimate use of transportation dollars—and one of my favorites, $3 million for the Odyssey Maritime Project in Seattle, WA. What makes this last one a highlight is that the ''Odyssey Maritime Project'' is not a surface transportation project of all. It is, in fact, a museum. But the sponsor of that project must not have wanted us to really know what the funding was being allocated for and instead chose to incorporate some cleaver penmanship to mask the true nature of the so-called transportation project.

With respect to the Coast Guard, the conference report earmarks $2,000,000 for the Coast Guard to participate in an unrequested joint facility that would locate a new air station in Chicago with a new facility that would also house city and State facilities. The new marine safety and rescue station is not justified, not requested, and in fact would provide duplicative air coverage already met by other Coast Guard air stations.

The conference report also earmarks $4,650,000 to test and evaluate a currently developed 85-foot fast patrol craft that is manufactured in the United States and has a top speed of 40 knots. Interestingly, there is only one company with such a patrol craft, Guardian Marine International, LLC., and it is based in the State of Washington. The Coast Guard did not request this vessel, does not need this vessel, nor does this vessel meet the Coast Guard's requirements. The Coast Guard's resources are already stretched thin and this will only hamper its ability to meet its new challenges since September 11. But again, the appropriators know best.

The conference report further earmarks $500,000 for the Columbia River Aquatic Non-indigenous Species Initiative—CRANSI—Center at Portland State University in Portland, Oregon, to support surveys of nonindigenous aquatic species in the Columbia River. This earmark is directly taking away much needed Coast Guard R&D funds that could be used to fight the war on drugs, protect our ports, or aid in search and rescue efforts.

And, as with other modes of transportation, the appropriators have larded the DOT's aviation programs with numerous earmarks and authorizing language that is within the jurisdiction of the Commerce Committee. For example, the Statement of Managers earmarks more than $206 million in FAA facilities and equipment projects at dozens of specific airports. I am not sure how the appropriators seem to know precisely which pieces of equipment need to be installed at which airports, but I believe that we should be leaving these decisions to the FAA. The more projects that are forced upon the agency, the less ability it has to focus on those that are truly needed to enhance safety and capacity.

The appropriators do the same thing when it comes to airport projects and the expenditure of discretionary funds. The Statement of Managers earmarks more than 100 specific airport construction projects totaling more than $200 million. Once again, this is intended to take away significantly from the discretion of the FAA to determine the most important needs of the system as a whole.

This might be the time to remind the Secretary and the modal administrators that the slew of projects included in the Statement of Managers are advisory only. The Statement of Managers does not have the force of law and the FAA and other modal agencies must exercise its judgment in complying with the recommendations of the managers.

While the aviation earmarking is bad, the raiding of existing aviation accounts for unrelated purposes is even worse. The FAA's Airport Improvement Program is supposed to be devoted to the infrastructure needs of our nation's airports. Yet the conference report take tens of millions of dollars out of AIP to pay for the FAA's costs of administering AIP, the Essential Air Service program, and the Small Community Air Service Developing Pilot Program. Theses are worthy activities and programs, but it violates the long-established purpose of AIP to use monies for these things.

Mr. President, last year I warned that we should just as well get rid of DOT and let the appropriators act as the authorizing agency since they so routinely substitute their own judgment for that of the agency's. Well, apparently I have a job in my retirement predicting the future. There is a provision in this bill that prohibits the use of any funds for a regional airport in southeast Louisiana, unless a commission of stakeholders submits a comprehensive plan for the Administrator's approval. While that is not necessarily good government, that is well within the agency purview. However, the bill goes further and requires that if the Administrator approves the plan, it must be then submitted to the Appropriations Committee for approval before funds can be spent.

This is unconscionable. Clearly the appropriators do not want this airport to be funded unless they say so. Are the appropriators now going to require that every decision that is made by the oversight agency be approved by them first? Will the Administrator or Secretary have to send letters regarding transportation policy to Congress for approval? Will DOT leave requests and travel schedules have to be sent to the Appropriations Committees? Where does this end? I understand that Congress is supposed to act as a check and balance to the executive branch, but I must ask, who is serving as a check and balance to the appropriators? At a minimum, isn't it supposed to be the authorizers? But passage of this conference report will provide clear proof that once again there are no checks and there is no balance.

Mr. President, I could go on and on but will refrain. It is hard to imagine but despite the seemingly unlimited lists of projects and funding redirectives provided for in this bill, it actually could have been worse. The appropriators did rightly reject some of the requests and wish-lists they received, such as including language to effectively alter the federal cap on the Boston Central Artery Tunnel Project—the Big Dig—or to take action to eliminate the Amtrak self-sufficiency requirement now that the Amtrak Reform Council has made its finding that Amtrak will not met its statutory directive. Perhaps if the requesters were appropriators, their Christmas wish list would have been fulfilled as well. I tell my colleagues, I will be going all over the country discussing this egregious, outrageous procedure which has gone completely out of control on a bipartisan basis. Of all the years I have seen this egregious porkbarrel spending, this is one of the worst.

The PRESIDING OFFICER. The Senator from Washington has 5 minutes remaining; the Senator from Alabama has 5 minutes remaining.

Mrs. MURRAY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. SHELBY. I yield 3 minutes of my time to the Senator from Pennsylvania, Mr. SPECTER.

Mr. SPECTER. Mr. President, I thank my colleague from Alabama for yielding me a brief period of time to comment about an omission from the appropriations conference report involving a constituent company of mine, Traffic.com. There had been an arrangement worked out in previous legislation. This would have given Traffic.com a followup contract for some $50 million where they have devised systems for monitoring traffic on the highways so the people can be informed where there is traffic congestion.

The first contract was awarded to Traffic.com under an arrangement where the second would follow through. There was competitive bidding for the first contract. The Department of Transportation wanted clarification, which was added in this Chamber on an amendment which was accepted to give the followup contract to Traffic.com. Then when we went to conference last week, I was informed a few minutes before the conference began that the provision had been dropped. There had been no notification.

When I raised the issue in the conference, I was advised there was legislation which prohibited this arrangement which they characterized as ‘‘sole source contracting,’’ but, in fact, it was not because the first contract had been competitively bid with the understanding that the second contract would follow.

In any event, our research in the interim since the conference committee met last week, to today, shows there is no legislative prohibition against this arrangement, even if it were sole source contracting, which, I repeat again, it is not. We then discussed at the conference the approach of having it included in the supplemental appropriations bill, which we are working on now. The Appropriations Committee is meeting this afternoon.

I thank the distinguished chairman of the subcommittee, Senator MURRAY, and the distinguished ranking member, Senator SHELBY, for commenting at that time they would support the effort to get it in the supplemental appropriations bill so we hope we can be cured at that time.

I did want to make the brief statement on the record at this point. I thank Senator SHELBY for yielding me the time. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. How much time remains?

The PRESIDING OFFICER. Three minutes five seconds.

Mr. SHELBY. I yield that time back.

UNANIMOUS CONSENT AGREEMENT

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Under the authority granted to the majority leader by the unanimous consent agreement of December 3, I ask unanimous consent that the vote on adoption of the conference report to accompany H.R. 2299, the Transportation appropriations bill occur at 12:30 p.m. today, without further intervening action, and I now ask for the yeas and nays on adoption.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

Mrs. MURRAY. Mr. President, back in July and August, the Senate spent a lot of time talking about the safety of Mexican trucks.

Originally, the White House wanted to allow Mexican trucks to travel throughout the United States without sufficient safety checks.

That raised real safety concerns for everyone from the Advocates for Highway & Auto Safety to the AAA of Texas.

The House of Representatives, meanwhile, voted to prevent any Mexican trucks from traveling beyond a limited area near the border.

I have always believed that we could ensure our safety and promote commerce at the same time.

So Senator SHELBY and I—working with our colleagues on both sides of the aisle—created a commonsense safety plan.

The Senate turned back several amendments—and voted twice with strong bipartisan super-majorities—to invoke cloture both on the committee substitute and the bill itself.

This summer, there were several attempts to weaken the safety provisions, but the Senate consistently rejected them.

And I am proud to say that the final conference agreement strictly adheres to the outlines of the Senate bill.

This agreement prohibits the border from being opened to Mexican trucks until the DOT implements a number of important safety measures, and until the DOT's inspector general has concluded a thorough audit of the Department's efforts.

I would like to spend a moment comparing the conference agreement with the administration's original plan.

Let me start with compliance reviews, which are comprehensive inspections of a trucking firm's vehicles, its management systems, and all of its license, insurance, and maintenance records.

It looks at the trucking firm's operating and violation histories and yields a decision as to whether the firm should be allowed to continue operating in the U.S.

Under the administration's plans, there was never going to be a requirement that a Mexican trucking firm undergo a compliance review.

The conference agreement, however, includes a requirement that each and every Mexican trucking firm undergo a compliance review before being granted permanent operating authority. There are no exceptions.

Let's look at on-site inspections.

The administration never intended to require that inspections by U.S. truck safety inspectors take place on-site at a Mexican trucking firm's facilities.

The conference agreement, however, requires that U.S. truck safety inspectors must visit every Mexican trucking firm either when they conduct their initial safety examination or when they conduct a compliance review to determine whether the firm should be granted permanent operating authority in the U.S.

The only exception is granted to the smallest independent operators in Mexico. They will be required to have these same exams conducted at the border.

Even with this exception, it is likely that these smallest of firms will be visited on-site.

That's because the DOT will have to conduct on-site inspections of at least half of all firms and half of all the traffic volume coming into the U.S.

Originally, the administration did not intend to verify many licenses when Mexican truckers crossed the border.

The DOT told us that they would verify the licenses on a random basis—but deliberately avoided defining what was meant by the word ''random.''

That could mean verifying 1 out of every 100 licenses or 1 out of every 1,000 licenses.

Under the conference agreement, the DOT will be required to electronically verify at least one out of every two licenses.

And the actual ratio will be even higher.

That's because the conference agreement requires that border inspectors verify the license of every trucker carrying hazardous materials, and every trucker undergoing a Level I inspection, and then requires that inspectors verify 50 percent of all other vehicles crossing the border.

On the issue of overweight trucks, the administration did not intend to implement any special effort to address overweight vehicles—even though Mexican weight limits far exceed those in the U.S.

The conference agreement, however, requires that—within 1 year of the date of enactment—each and every truck crossing the border at the ten busiest border crossings between the U.S. and Mexico will be weighed.

In fact, the conference agreement prohibits the border from being opened at all—until half of these border crossings have weigh-in-motion systems fully installed.

The administration did not intend to require that Mexican trucks cross the border only where DOT safety inspectors are on duty.

The conference agreement requires that the trucks cross where inspectors are on duty.

It also requires that they enter the U.S. at crossings where there is adequate capacity for the inspectors to conduct meaningful inspections and, if need be, place vehicles out-of-service for safety violations.

The DOT was planning to open the border whether or not a number of critical truck safety rulemakings had been finalized and published.

Some of these rulemakings have been delayed for years, but the DOT planned to open the border anyway.

The conference agreement, however, requires that the Secretary either implement policy directives or publish interim final rules that will immediately govern the behavior of trucking firms—before the border can be opened.

Now let's look at the hauling of hazardous materials across the border. The administration had not planned on implementing any unique requirements for hazardous materials trucks even though they represent a unique and dangerous threat on our highways.

The conference agreement, however, requires that even if other trucks have already been allowed to cross the border no hazardous material trucks will be allowed to enter the U.S. until the governments of the U.S. and Mexico enter into a separate agreement confirming that U.S. and Mexican drivers of these vehicles have been subjected to the same unique requirements.

Finally, concerning the oversight of the inspector general, the administration was planning to open the border without regard to the long list of safety deficiencies that had been cited by the DOT inspector general.

As far as the DOT was concerned, the inspector general could continue to publish as many critical audits as he wanted to—but they were going to open the border on January 1 without regard to whether any of the deficiencies had been addressed.

There wasn't even a process in place to require the Transportation Secretary to acknowledge the findings of the IG.

Under the conference agreement, no trucks may cross the border until the IG has completed another entire audit of the DOT's efforts.

And no trucks may cross the border until the Transportation Secretary has received the IG's findings and has certified in writing, in a manner addressing each of those findings, that the opening of the border does not present an unacceptable risk to our constituents.

So, the conference agreement includes a serious mechanism to hold the Transportation Secretary accountable for his decision to open the border.

And you can be sure that the Transportation Appropriations subcommittee will be holding a hearing with both the Transportation Secretary and the inspector general once the IG has made his findings and the Secretary is poised to issue his certification.

Some observers have suggested that the requirements of the conference agreement are not as restrictive as the measures that passed the Senate.

As I view it, the safety requirements are effectively the same.

The conference agreement gives the administration a degree of flexibility in implementing these safety requirements.

Others have said that the border is likely to open more quickly under the provisions of the conference agreement than under the Senate-passed bill.

That may be true. But I want to remind my colleagues that, it has never been our goal to keep the border closed.

I voted for NAFTA.

I represent a state that is highly-dependent on international trade.

And I believe in the economic benefits that come with lower trade barriers.

Throughout this entire process, my goal—and that of Senator SHELBY—has been to ensure the safety of our highways.

And I am proud that this conference agreement makes great progress for our safety.

I am prepared to yield back all of our time on the bill if there is no one to speak.

I yield back the remainder of our time.

COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 10) to provide pension reform and for other purposes.

Pending:

Daschle (for Hatch/Baucus) Amendment No. 2170, in the nature of a substitute.

The PRESIDING OFFICER. The assistant majority leader.

Mr. REID. Mr. President, will the Chair indicate how much time is remaining on this matter?

The PRESIDING OFFICER. There remain 14 hours 40 minutes.

Mr. REID. 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. DOMENICI. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

AMENDMENT NO. 2202 TO AMENDMENT NO. 2170

Mr. DOMENICI. Mr. President, I call up amendment No. 2202 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 2202 to amendment No. 2170.

(Purpose: To strike the provision related to directed scorekeeping)

Strike section 105(c).

Mr. DOMENICI. Mr. President, I put before the Senate an interesting, simple amendment that we as a Senate should adopt. I hope this amendment is aired for a while. Because Senators have asked me not to, I do not have any intention to move rapidly. Other Senators are presently indisposed and they might come and perhaps become cosponsors. We will see what we can do.

But I want to make sure the Domenici amendment No. 2202 will not be mistaken for anything other than what it is. This amendment is not a killer amendment with reference to the underlying amendment. The railroad retirement bill will in no way be damaged by this amendment. This amendment is just a very simple recognition that the bill has some language in it that shouldn't be in it. As much as we want to do for the railroad retirees and for all of those who have joined in a rather mass number of Senators who want to see this happen—that is, passage of the bill—they actually should join in saying we want to do this. But we want to be honest with the American people in terms of what the bill costs and how you should score the actual costs against the Treasury.

My amendment would strike what we call directed scorekeeping language out of section 105. This technical language inserted just before the House passed the bill instructs the Office of Management and Budget to deviate—let me go slow here so everybody will get it—from the standard accounting practice when implementing this bill.

The Congressional Budget Office estimates that the provision allowing private investment in equities would increase outlays by $15.3 billion in 2002. That means, if you follow the way we do things in a normal manner pursuant to the rules and guidelines in the law, this bill adds $15.3 billion in increased outlays.

That is a matter of the Congressional Budget Office doing its work and telling us the answer when they are asked