and will not be appointed—that he makes his decisions based on the qualifications of the candidates. Despite these statements, the President's nominees seem to have certain striking similarities. They seem to favor powerful interests over individuals. They favor States' rights over civil rights. And many of them are all loyal Federalist Society members and committed to the political agenda of the most conservative wing of the Republican Party. The Senate's constitutional duty to provide advice and consent on judicial nominations is vital in these circumstances—Federal judges must be devoted first and foremost, not to a political platform or certain parties, but to the rule of law, the Constitution, and the basic principles of fairness and justice.

If we are to allow the President to pack the courts with political party loyalists and radical right-wing ideologues, we will cease to have a Government of laws and will end up with a Government controlled by the views of a few. We would risk having a judiciary that functions as a rubber stamp for any right wing argument, policy, or political goal sought to be achieved via the courts.

Yet, despite the troubling records of so many of Bush's confirmed judges and the other disappointing developments this year, Senate Democrats have confirmed vast members of nominees who have come to the Senate floor and are today again making sure that the process of judicial appointments moves forward. Democrats have not obstructed the confirmation process for judicial and executive branch nominations as Republicans did when President Clinton was in office. Today, we proceed to confirm a judicial nominee in spite of the President's recent actions, those of Senate Republicans, and serious reservations about this nominee.

Mr. Filip's nomination was reported favorably to the Senate last October. Had the Republican leadership wanted to proceed on it, this nomination could easily have been confirmed in October, November, or December last year before the Senate adjourned. Instead, partisans chose to devote 40 hours to a talkathon on the President's most controversial and divisive nominees rather than proceed to vote on those judicial nominees with the support of the Senate. The delay in considering this nomination is the responsibility of the Republican leadership.

I congratulate Mark Filip and his family on his confirmation.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Mark R. Filip, of Illinois, to be a U.S. District Court Judge for the Northern District of Illinois?

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 8 Ex.]

YEAS—96

Akaka	DeWine	Lott
Alexander	Dodd	Lugar
Allard	Dole	McCain
Allen	Domenici	McConnell
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (FL)	Reed
Bunning	Graham (SC)	Reid
Burns	Grassley	Roberts
Byrd	Gregg	Rockefeller
Campbell	Hagel	Santorum
Cantwell	Harkin	Sarbanes
Carper	Hatch	Schumer
Chafee	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Clinton	Inouye	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lincoln	Wyden

NOT VOTING—4

Edwards	Kerry
Hollings	Lieberman

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

The Senator from Nevada.

Mr. REID. Mr. President, very briefly, we have just approved the 171st judge during the Bush administration. There have been 171 judges approved. To my knowledge, there have been four he submitted who have not been approved, other than those who are going through the committee process. So the score is 171 to 4. A good average, I think.

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will continue consideration of S. 1072.

The Senator from Missouri.

AMENDMENT NO. 2265 WITHDRAWN

Mr. BOND. Mr. President, I withdraw amendment 2265.

The PRESIDING OFFICER. The Senator has that right.

The Senator from North Dakota.

AMENDMENT NO. 2267

(Purpose: To exempt certain agricultural producers from certain hazardous materials transportation requirements)

Mr. DORGAN. Mr. President, prior to the vote I indicated I had an amendment. I want to begin the discussion very briefly of the amendment. The amendment is one I have worked on for some while. It deals with a relatively small issue with respect to the context of this bill, but a rather large issue for family farmers. Let me describe what it is.

There was a justifiable effort to address issues dealing with homeland security by the Department of Transportation. They issued regulations that would regulate the shipment and transport of hazardous material in commerce in amounts that require the shipment to be placarded and also to implement security plans for that shipment.

The difficulty and the problem is this. The way the Department of Transportation developed this rule, the rule will apply to family farmers, for example, who have a 120-gallon fuel service tank in the back of their pickup truck. Those farmers are not going to have a security plan for that pickup truck and for that service tank.

It is perfectly logical to want to regulate for safety purposes the shipment of hazardous materials.

Let me give you an example of where this goes when the definitions are not carefully crafted. I was a senior in high school when myself and two of my best friends decided to go to the Black Hills of South Dakota for a weekend. It was a pretty big deal for us. We took a pickup truck and we had a 120-gallon service tank full of gasoline. We had a few dollars, and we bought 120 gallons of gasoline and a relatively new pickup, for three seniors in high school. We were prepared to have a pretty good time. If that happened today, we would under the current rules be required to have a security plan in place prior to taking our pickup truck and 120 gallons of regular gasoline on our trip to the Black Hills of South Dakota. Three high school seniors are not going to have a security plan to get enough gasoline to go to the Black Hills and have a good time. Why would we need a security plan? Because anything over 110 gallons of fuel, propane, chemicals, or hazardous materials will be required to have a security plan. Forget about three seniors who went to the Black Hills.

How about a farmer who has that 120-gallon service tank in the back of his pickup truck who stops at a local cafe and goes in to buy a cheeseburger? He is in violation of this rule by the Department of Transportation unless he can physically see his pickup truck through the window because he will be required to have a ''security plan'' and have a placard.

Again, when I was a young boy, my dad sent me to Dickinson, ND to get 5

or 6 30-gallon drums of spray pesticides and herbicides. It is done all the time. That would, of course, violate the rule these days unless I had a security plan for my trip to Dickinson to pick up 4 or 5 30-gallon drums of chemicals to spray on the crops in the field near Regent, ND.

That is what this rule now would provide. It is a bad rule. It does not mean, in my judgment, to include family farmers. It doesn't mean to put them in handcuffs with respect to the way they handle chemicals and propane and gasoline. But in fact it does. I don't want farmers to be in violation of the rule or in violation of the law. I don't think the Department of Transportation or the Congress, in implementing this rule, anticipated this kind of burden with respect to family farms.

In fact, the University of Illinois Extension Service put out an extension agriculture update. Let me describe what it says. It states the rule by DOT says persons, including farmers, who ship or transport hazardous materials in commerce in amounts that require the shipment to be placarded, must develop and implement security plans by September 25, 2003. Examples of materials to which the security plan apply include explosives such as dynamite, detonators, pesticides, fertilizer, hydrous ammonia, ammonia nitrate, and fuels such as gasoline and propane. If you ship or transport fertilizers, pesticides, gasoline, propane and packages or containers that are larger than 119 gallons, or the total quantity you ship or transport at any one time is more than 1,000 pounds, then you must have a security plan. If you are a supplier who delivers the pesticides, fertilizers, and fuels you use to your farm, then you don't need that security plan. And if you only transport fertilizers, pesticides, and fuels between the fields of your farm, then you don't need to have a security plan. But if you drive to town to get the chemicals, fertilizers, or fuel, then you have to have a security plan.

Incidentally, the text I have just read from is part of a U.S. Department of Transportation fact sheet, and it was entitled ''Hazardous Materials Transportation Security Requirements, Applicability to Farmers and Farming Operations.'' That was available from the Department of Transportation's Web site earlier this fall. But it now has been removed. It is gone. You now can't find it. If you ask where did this come from, what happened to it, why is it gone, I don't have the foggiest idea. All I know is what it said, and it doesn't say it anymore. Now we are told the Department of Transportation is putting this security plan on hold despite the fact it is the rule, and they are now beginning to discuss the issue with the U.S. Department of Agriculture. They are discussing it with State departments of transportation, and the American Farm Bureau.

That is also in the piece of information from the University of Illinois Extension Service.

First of all, when the Department of Transportation does a rule, you would expect they would do it right side up. You do the consultation first. Then you develop the rule having knowledge of how people react to it and what their notion is of how it should work and how it would apply. In this case, apparently they wrote a rule dealing with hazardous material transportation, including basic fuels and chemicals, and now are beginning to consult with others about how this would impact family farmers.

I am offering an amendment that clarifies using the definition of family farmers in the farm bill, and that this does not apply to family farmers in the routine business of family farming. Somebody with a pickup truck and a service tank in the back full of gasoline that is moving around is not going to have to have a security plan to do that. Someone who is hauling a few 30-gallon drums of chemicals from the shop in town out to their farm doesn't need a security plan to do that. If we are going to have every family farm developing security plans, who is going to enforce that? Who is going to inspect it? Who is going to determine whether it meets DOT inspections and requirements and specifications?

I just think this is a circumstance where it is a template that is put over everything that doesn't fit at all for family farmers. Family farmers do a pretty good job out on the farm. They work hard and try hard. They are the Americans who live with hope. They put a seed in the ground and they hope. They hope it rains, they hope it grows, they hope it doesn't hail, and they hope the insects don't come. They hope they don't get drought or too much moisture, and they hope, finally, if they are able to get it harvested they can haul it to the elevator and get a decent price. They don't ask for a lot. They certainly ask us to stay out of their way with respect to rules and regulations that don't make basic common sense and that do not meet the test of common sense.

This attempt by the Department of Transportation, laudable as it might be, to try to require the development of security plans for the movement of large quantities of hazardous material—certainly dynamite, detonators, and so on, I understand that. But when you talk about gasoline and farm chemicals, we must understand there is a difference between substantial movement from commercial operators and the ordinary transportation of farm chemicals and farm fuel by family farmers around this country.

For that reason, I have offered an amendment that I hope will meet the test of changing this regulation in a manner that represents some basic common sense and relieve the burden from family farmers. As a matter of fact, family farmers are not complying with this. They really effectively cannot comply with it. The Department of Transportation has indicated to some that they would probably not enforce it. You have the Agriculture Extension Service telling farmers, here is what you have to do to comply with the rule that is virtually unenforceable and really doesn't make any sense.

When we see things here that do not meet a test of common sense, what we ought to do is legislate and change it. That is what I propose to do with respect to the hazardous materials transportation requirements.

Let me again say I believe there is a requirement for us to be concerned about the movement of hazardous materials in our country. I fully support the Department of Transportation. They have a difficult and vexing job to try to respond to all of these things. But this particular rule does not meet the requirements, and does not meet the test of common sense dealing with family farmers.

I have not yet offered the amendment. I would like to send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 2267.

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

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

The amendment is as follows:

On page 880, after the item following line 6, insert the following:

SEC. 1621. EXEMPTION FROM CERTAIN HAZARDOUS MATERIALS TRANSPORTATION REQUIREMENTS.

(a) DEFINITION OF ELIGIBLE PERSON.—In this section, the term ''eligible person'' means an individual or entity that is eligible to receive benefits in accordance with section 1001D of the Food Security Act of 1985 (7 U.S.C. 1308-3a).

(b) EXEMPTION.—Subject to subsection (c), part 172 of title 49, Code of Federal Regulations, shall not apply to an eligible person that transports or offers for transport a fertilizer, pesticide, or fuel for agricultural purposes, to the extent determined by the Secretary.

(c) APPLICABILITY.—Subsection (b) applies to—

(1) security plan requirements under subpart I of part 172 of title 49, Code of Federal Regulations (or a successor regulation); and

Mr. DORGAN. Mr. President, I have described the amendment in some detail. I say to my colleague from Oklahoma I would be happy if he would like to have the amendment approved now. But, if not, if there are some issues with respect to language or some discussions we should have with you and your staff about the breadth of this, I would be happy to do that as well. This bill will be on the floor for a number of days. I am only anxious to make certain we dispose of this and approve it before we complete this bill. My attempt is, of course, to cooperate with those who are managing the bill.

Mr. INHOFE. Mr. President, I appreciate that very much. It is probably a good idea to set it aside at this time. We will have ample time later to discuss it.

Mr. DORGAN. I have no objection to it being set aside when others wish to offer amendments. I appreciate the cooperation of the Senator from Oklahoma and the Senator from Vermont.

Mr. GREGG. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. DORGAN. What is the objection to? There is no unanimous consent request.

The PRESIDING OFFICER. There was no unanimous consent.

Mr. DORGAN. I don't believe there was a unanimous consent request.

The PRESIDING OFFICER. There was no unanimous consent request propounded.

Mr. DORGAN. So there can be no objection to a unanimous consent request never made.

The PRESIDING OFFICER. The Senator is correct.

The Senator from New Hampshire.

Mr. GREGG. I was under the impression there was a unanimous consent request to set the amendment aside. I take it that did not occur.

The PRESIDING OFFICER. That request was not propounded. The Senator from North Dakota indicated he would not object if such a request were made.

Mr. GREGG. Then obviously I do not object.

Mr. INHOFE. Mr. President, that is not set aside by unanimous consent.

There may be others in the Chamber who want to be heard concerning the highway bill. If that is not the case, I will go ahead and continue discussing this. It is our hope to go through it section by section. We are quite a ways along in doing that.

First, I will restate some of the comments I made in the past about this bill. We have spent in the committee an entire year working on this legislation. We have had numerous hearings on various environmental concerns, procedural concerns. We had State representation at hearings about many of the parts of the bill that will end up giving the States more responsibility to take care of some of their needs. We had a chance to talk about some of the problems voiced in the Senate.

As far as the position of the administration, I do not know what more we can do. We have gone through the objections they had, or the three statements they made, in terms of finding it not to be acceptable. These have been met.

We have serious infrastructure needs now. The State system is 50 years old; 32 percent of our major roads are in poor or remedial condition; 29 percent of the bridges are structurally deficient. I am more emotional regarding the 29 percent bridge figure because Oklahoma ranks No. 1. Missouri is No. 2 in percentage of bridges that are structurally deficient.

We have 36 percent of the Nation's urban rail vehicles and maintenance facilities in substandard or poor condition. And 29 percent of the Nation's bus fleet and maintenance facilities are in substandard condition. The list goes on.

I am particularly sensitive to this, having served for 8 years in the other body on the Environment and Public Works Committee, where we talked about this and watched this as the reauthorizations took place. I participated in both ISTEA and in TEA–21, in both cases, serving at that time in the other body.

I know the way things were done were a little distasteful for me, but we came up with three authorization bills. It is our hope to be deliberate and spend, as we have, a year in looking at all the problems, seeing what would be better than the system used before.

In the past, we had section 1104, minimum guarantees. That has been replaced by the Equity Bonus Program. The minimum guarantees were arbitrary, politically driven percentages each State had. It was the thought that when you get to the point where you have enough votes to pass it, you did not care. We did not want to do that. So we took into consideration the donor status of States, we took into consideration the rapid growing States, States such as Texas, California, Nevada, and Florida, and we actually have ceilings as well as floors to try to satisfy as many people as possible.

Yesterday, we had a number of people come to the floor saying the formula was unfair. We took each State, State by State, which I am happy to do. We have the capability of doing it, again, to show that it is not unfair. We have a formula now and everyone benefits. There is no State that gets less than 10 percent more than they had before and it takes care of the problems.

The donor States have always been a problem. My State has been a donor State since the program began. So the fact that we will all end up with a 95-percent status is very significant.

We have never adequately handled the safety problems. We know about the deaths on the highway: 43,000 people each year dying on the highway. While the percentage has not gone up, the numbers have. We are addressing that.

The intermodal connections and freight movement were never adequately addressed by the previous bills. These are addressed.

Streamlining, so that many of the problems we have—some environmental, some other types of problems—can be dealt with more rapidly and in advance so we can keep the construction going.

We have the IPAM program that will take these programs that are ready to go and get them moving right away. If we are going to do it, do it now and get the people employed. A lot of people are concerned about jobs. Certainly there is no bigger job anywhere.

It has been a long process. I know some Members just do not want a bill, but we will get through the process. We will get a bill and get people back to work and rebuild the infrastructure.

We left off on section 1612. I will handle a couple of sections. The Senator from Missouri will arrive in about 5 minutes with some subjects to address.

Section 1613 is the improved interagency consultation.

Mr. GREGG. Will the Senator yield?

Mr. INHOFE. Yes.

Mr. GREGG. Does the Senator mind, after he finishes his statement, that I be allowed to speak?

Mr. INHOFE. Anyone who wants to speak so long as it is on the highway bill.

Mr. GREGG. I ask unanimous consent that after the completion of the statement of the Senator from Oklahoma, I have 5 minutes.

Mr. INHOFE. I have completed my remarks and there is no objection.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 2268 TO AMENDMENT NO. 2267

Mr. GREGG. I send an amendment to the desk which second degrees the amendment of Senator DORGAN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] proposes an amendment numbered 2268 to amendment No. 2267.

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

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

The amendment is as follows:

This Act may be cited as the ''Public Safety Employer-Employee Cooperation Act of 2003''.

SEC. 2. DECLARATION OF PURPOSE AND POLICY.

The Congress declares that the following is the policy of the United States:

(1) Labor-management relationships and partnerships are based on trust, mutual respect, open communication, bilateral consensual problem solving, and shared accountability. Labor-management cooperation fully utilizes the strengths of both parties to best serve the interests of the public, operating as a team, to carry out the public safety mission in a quality work environment. In many public safety agencies it is the union that provides the institutional stability as elected leaders and appointees come and go.

(2) The Federal Government needs to encourage conciliation, mediation, and voluntary arbitration to aid and encourage employers and their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts through negotiations to settle their differences by mutual agreement reached through collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes.

(3) The absence of adequate cooperation between public safety employers and employees has implications for the security of employees and can affect interstate and intrastate commerce. The lack of such labor-management cooperation can detrimentally impact the upgrading of police and fire services

of local communities, the health and well-being of public safety officers, and the morale of the fire and police departments. Additionally these factors could have significant commercial repercussions. Moreover, providing minimal standards for collective bargaining negotiations in the public safety sector can prevent industrial strife between labor and management that interferes with the normal flow of commerce.

SEC. 3. DEFINITIONS.

In this Act:

(1) AUTHORITY.—The term ''Authority'' means the Federal Labor Relations Authority.

(2) EMERGENCY MEDICAL SERVICES PERSONNEL.—The term ''emergency medical services personnel means an individual who provides out-of-hospital emergency medical care, including an emergency medical technician, paramedic, or first responder.

(3) EMPLOYER; PUBLIC SAFETY AGENCY.—The terms ''employer'' and ''public safety agency'' means any State, political subdivision of a State, the District of Columbia, or any territory or possession of the United States that employs public safety officers.

(4) FIREFIGHTER.—The term ''firefighter'' has the meaning given the term ''employee engaged in fire protection activities'' in section 3(y) of the Fair Labor Standards Act (29 U.S.C. 203(y)).

(5) LABOR ORGANIZATION.—The term ''labor organization'' means an organization composed in whole or in part of employees, in which employees participate, and which represents such employees before public safety agencies concerning grievances, conditions of employment and related matters.

(6) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' has the meaning given such term in section 1204(5) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(5)).

(7) MANAGEMENT EMPLOYEE.—The term ''management employee'' has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual employed by a public safety employer in a position that requires or authorizes the individual to formulate, determine, or influence the policies of the employer.

(8) PUBLIC SAFETY OFFICER.—The term ''public safety officer''—

(A) means an employee of a public safety agency who is a law enforcement officer, a firefighter, or an emergency medical services personnel;

(B) includes an individual who is temporarily transferred to a supervisory or management position; and

(C) does not include a permanent supervisory or management employee.

(9) SUBSTANTIALLY PROVIDES.—The term ''substantially provides'' means compliance with the essential requirements of this Act, specifically, the right to form and join a labor organization, the right to bargain over wages, hours, and conditions of employment, the right to sign an enforceable contract, and availability of some form of mechanism to break an impasse, such as arbitration, mediation, or fact finding.

(10) SUPERVISORY EMPLOYEE.—The term ''supervisory employee'' has the meaning given such term under applicable State law in effect on the date of enactment of this Act. If no such State law is in effect, the term means an individual, employed by a public safety employer, who—

(A) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment; and

(B) devotes a majority of time at work exercising such authority.

SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBILITIES.

(a) DETERMINATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination as to whether a State substantially provides for the rights and responsibilities described in subsection (b). In making such determinations, the Authority shall consider and give weight, to the maximum extent practicable, to the opinion of affected parties.

(2) SUBSEQUENT DETERMINATIONS.—

(A) IN GENERAL.—A determination made pursuant to paragraph (1) shall remain in effect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).

(B) PROCEDURES FOR SUBSEQUENT DETERMINATIONS.—Upon establishing that a material change in State law or its interpretation has occurred, an employer or a labor organization may submit a written request for a subsequent determination. If satisfied that a material change in State law or its interpretation has occurred, the Director shall issue a subsequent determination not later than 30 days after receipt of such request.

(3) JUDICIAL REVIEW.—Any State, political subdivision of a State, or person aggrieved by a determination of the Authority under this section may, during the 60 day period beginning on the date on which the determination was made, petition any United States Court of Appeals in the circuit in which the person resides or transacts business or in the District of Columbia circuit, for judicial review. In any judicial review of a determination by the Authority, the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed, except that any final determination of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority's decision was arbitrary and capricious.

(b) RIGHTS AND RESPONSIBILITIES.—In making a determination described in subsection (a), the Authority shall consider whether State law provides rights and responsibilities comparable to or greater than the following:

(1) Granting public safety officers the right to from and join a labor organization, which may exclude management and supervisory employees, that is, or seeks to be, recognized as the exclusive bargaining representative of such employees.

(2) Requiring public safety employers to recognize the employees' labor organization (freely chosen by a majority of the employees), to agree to bargain with the labor organization, and to commit any agreements to writing in a contract or memorandum of understanding.

(3) Permitting bargaining over hours, wages, and terms and conditions of employment.

(4) Requiring an interest impasse resolution mechanism, such as fact-finding, mediation, arbitration or comparable procedures.

(5) Requiring reinforcement through State courts of—

(A) all rights, responsibilities, and protections provided by state law and enumerated in this section; and

(B) any written contract or memorandum of understanding.

(c) FAILURE TO MEET REQUIREMENTS.—

(1) IN GENERAL.—If the Authority determines, acting pursuant to its authority under subsection (a), that a State does not substantially provide for the rights and responsibilities described in subsection (b), such State shall be subject to the regulations and procedures described in section 5.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on the date that is 2 years after the date of enactment of this Act.

SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Authority shall issue regulations in accordance with the rights and responsibilities described in section 4(b) establishing collective bargaining procedures for public safety employers and officers in States which the Authority has determined, acting pursuant to its authority under section 4(a), do not substantially provide for such rights and responsibilities.

(b) ROLE OF THE FEDERAL LABOR RELATIONS AUTHORITY.—The Authority, to the extent provided in this Act and in accordance with regulations prescribed by the Authority, shall—

(1) determine the appropriateness of units for labor organization representation;

(2) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in a appropriate unit;

(3) resolve issues relating to the duty to bargain in good faith;

(4) conduct hearings and resolve complaints of unfair labor practices;

(5) resolve exceptions to the awards of arbitrators;

(6) protect the right of each employee to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and protect each employee in the exercise of such right; and

(7) take such other actions as are necessary and appropriate to effectively administer this Act, including issuing subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States, and administering oaths, taking or ordering the taking of depositions, ordering responses to written interrogatories, and receiving and examining witnesses.

(c) ENFORCEMENT.—

(1) AUTHORITY TO PETITION COURT.—The Authority may petition any United States Court of Appeals with jurisdiction over the parties, or the United States Court of Appeals for the District of Columbia Circuit, to enforce any final orders under this section, and for appropriate temporary relief or a restraining order. Any petition under this section shall be conducted in accordance with subsections (c) and (d) of section 7123 of title 5, United States Code, except that any final order of the Authority with respect to questions of fact or law shall be found to be conclusive unless the court determines that the Authority's decision was arbitrary and capricious.

(2) PRIVATE RIGHT OF ACTION.—Unless the Authority has filed a petition for enforcement as provided in paragraph (1), any party has the right to file suit in a State court of competent jurisdiction to enforce compliance with the regulations issued by the Authority pursuant to subsection (b), and to enforce compliance with any order issued by the Authority pursuant to this section. The right provided by this subsection to bring a suit to enforce compliance with any order issued by the Authority pursuant to this section shall terminate upon the filing of a petition seeking the same relief by the Authority.

SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.

A public safety employer, officer, or labor organization may not engage in a lockout,

sickout, work slowdown, or strike or engage in any other action that is designed to compel an employer, officer, or labor organization to agree to the terms of a proposed contract and that will measurably disrupt the delivery of emergency services, except that it shall not be a violation of this section for an employer, officer, or labor organization to refuse to provide services not required by the terms and conditions of an existing contract.

SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

A certification, recognition, election-held, collective bargaining agreement or memorandum of understanding which has been issued, approved, or ratified by any public employee relations board or commission or by any State or political subdivision or its agents (management officials) in effect on the day before the date of enactment of this Act shall not be invalidated by the enactment of this Act.

SEC. 8. CONSTRUCTION AND COMPLIANCE.

(a) CONSTRUCTION.—Nothing in this Act shall be construed—

(1) to invalidate or limit the remedies, rights, and procedures of any law of any State or political subdivision of any State or jurisdiction that provides collective bargaining rights for public safety officers that are equal to or greater than the rights provided under this Act;

(2) to prevent a State from enforcing a right-to-work law that prohibits employers and labor organizations from negotiating provisions in a labor agreement that require union membership or payment of union fees as a condition of employment;

(3) to invalidate any State law in effect on the date of enactment of this Act that substantially provides for the rights and responsibilities described in section 4(b) solely because such State law permits an employee to appear on his or her own behalf with respect to his or her employment relations with the public safety agency involved; or

(4) to permit parties subject to the National Labor Relations Act (29 U.S.C. 151 et seq.) and the regulations under such Act to negotiate provisions that would prohibit an employee from engaging in part-time employment or volunteer activities during off-duty hours; or

(5) to prohibit a State from exempting from coverage under this Act a political subdivision of the State that has a population of less than 5,000 or that employs less than 25 full time employees.

For purposes of paragraph (5), the term ''employee'' includes each and every individual employed by the political subdivision except any individual elected by popular vote or appointed to serve on a board or commission.

(b) COMPLIANCE.—No State shall preempt laws or ordinances of any of its political subdivisions if such laws provide collective bargaining rights for public safety officers that are equal to or greater than the rights provided under this Act.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. GREGG. This is the same amendment I offered before. Obviously, it was removed from being in order because the underlying amendment was withdrawn, so I have reoffered it to keep it in the batting order.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I was happy to do that. I will continue going through section by section.

When we talk about improved interagency consultation, this is another area where this bill is different from the reauthorizations we had in the past. We had intra-agency consultation as well as consultation at the various levels of Government. The States have a much larger voice in the recognition that they are more aware of the problems that exist than we are in Washington. It is very positive. Therefore, the States and MPOs are encouraged to consult with State and local air quality agencies in developing criteria from CMAQ projects and when making decisions as to which projects and programs to fund.

Section 1614 is the evaluation assessment of the CMAQ projects. To ensure that information on successful CMAQ projects is widely available, the Department of Transportation is directed to consult with the EPA to evaluate and assess a representative sample of CMAQ projects to maintain and disseminate a database of these projects.

Section 1615 is synchronized planning and conformity timelines, requirements, and horizon. Currently, the schedules for demonstrating conformity are not the same as the schedules for adopting long-range transportation plans and transportation improvement programs. That is TIPS. This disconnect has caused some areas to be in a continuous planning and conformity cycle.

In response to this inconsistency, the bill aligns the long-range plan updates, TIP updates, and conformity determinations for metropolitan areas on consistent 4-year cycles. Heretofore, there were various cycles and this conforms them to each other.

The bill also changes how far into the future the conformity determination must look to more closely match the length of time covered by the State's air quality plan referred to as a State implementation plan, or SIP plan.

Currently, conformity determinations take a 20-year outlook on the transportation planning side, even though most SIPs cover no more than 10 years. Obviously, we are trying to conform them with each other.

Section 1616 is in regard to the transition to new air quality standards. EPA plans to designate nonattainment areas for the new 8-hour ozone standard, that we have gone through just a few years ago, and the new fine particulate standard, at PM2.5, this year. Areas that have not previously been designated as nonattainment for the same pollutant will have 3 years to submit SIPs which include the motor vehicle emissions budget used to determine conformity. However, only a 1-year grace period is allowed before having to demonstrate conformity. Because of this, an area may have 2 years during which it must use some other means of demonstrating conformity.

Nonattainment areas are given the option of using the motor vehicle emissions budget from an approved SIP for the most recent prior standard for that pollutant. For example, an area that is in nonattainment for the 1-hour ozone standard and is designated as being in nonattainment for the new 8-hour ozone standard may use its 1-hour budget to determine conformity until it has an approved budget for the 8-hour standard.

Nonattainment areas are also given the option of using other currently available tests for demonstrating conformity without an approved air quality SIP.

Section 1617 is in regard to reduced barriers to air quality improvements. Nonattainment areas can use transportation control measures, such as HOV lanes, transit projects, park-and-ride lots, ride-share programs, and pedestrian and bicycle facilities to improve air quality. These TCMs are often included in the State's air quality SIP. Currently, if a State determines it would be better served by substituting one type of TCM for another, the State must already have a substitution mechanism in its approved State implementation plan or it must revise its plan.

This bill provides a substitution mechanism for all States, provided that the TCM to be substituted achieves the same or greater emission reductions as the TCM being replaced, based on analysis using the latest planning assumptions and current models.

Now, it has been our intention, as we announced before, that the chairman of the Transportation Subcommittee, Senator BOND, would be recognized at this time for the purpose of——

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Arizona.

Mr. MCCAIN. Madam President, I ask for the yeas and nays on the Gregg amendment.

Mr. INHOFE. Madam President, I believe I have the floor.

The PRESIDING OFFICER. The Senator from Oklahoma does have the floor. I apologize.

Mr. INHOFE. Thank you, Madam President.

Section 1618 is in regard to the air quality monitoring data influenced by exceptional events.

This bill directs EPA to promulgate regulations governing the handling of air quality-monitoring data influenced by exceptional events, such as forest fires or volcanic eruptions, certainly something of great interest to the Senator from Arizona. These types of natural activities should not influence whether a region is meeting its Federal air quality goals.

The EPA is also required to reevaluate its approach to modeling carbon monoxide emissions from motor vehicles to ensure that it is appropriate for cold-weather States, such as Alaska.

MORNING BUSINESS

Mr. INHOFE. Madam President, I ask unanimous consent that there now be a period of morning business, with Senators speaking for up to 30 minutes each.