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Senate

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2005—CONFERENCE REPORT—Continued

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the time allocated to the Senator from Arizona be rescinded.

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

Mr. STEVENS. How much time remains, Mr. President?

The ACTING PRESIDENT pro tempore. Approximately 1 hour 10 minutes.

Mr. STEVENS. May I inquire if the Senator from West Virginia wishes to use any further time at this time?

Mr. BYRD. Mr. President, if the distinguished Senator will yield, I will respond. I do intend to. I would hope that the cloakroom would find out if any Senators on my side want any time on this bill.

Mr. STEVENS. That is the reason I have reserved our time and Senator INOUE reserved his time also. I have been notified of no Senator on my side who wishes to use part of my time. I don't know about the Senator from Hawaii. He indicates he has had no requests.

It appears Senator BYRD would be the last person to make a statement.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Mr. President, I speak, in part, on another matter, but basically with reference to the Homeland Security appropriations bill. I would hope to title my remarks at this point "Homeland Insecurity."

In a mere matter of days, we will officially kick off the 2004 Presidential election season, with the convening of

the Democratic convention in Boston. The political activities and festivities in Boston will also mark the beginning of a tense interlude between the conventions and the November elections, during which the Nation has been told to brace for the possibility of a large-scale terrorist attack on the United States.

Earlier this month, Homeland Security Secretary Tom Ridge and FBI Director Robert Mueller went on national television to warn the American people that credible evidence pointed to plans by al-Qaida to launch a large-scale attack on the United States before the November elections in an effort to disrupt our democratic process. Yet in the weeks since our Nation's top Homeland Security officials issued that blunt and alarming warning, the administration appears to have buried its head in the sand, carrying on with business as usual, seemingly oblivious to the gathering danger predicted by its own experts.

This morning the Washington Times newspaper published on its front page a chilling account of shadowy groups of Middle Eastern men carrying out surveillance at airports, probing security measures, conducting what appear to be dry runs on our aircraft. The reports are anecdotal, but regardless of whether the article turns out to be accurate or merely an example of scare-mongering, it raises serious questions and underscores serious flaws in the administration's preparedness to respond to another terrorist attack on the United States.

Following the tragic events of September 11, protecting the Nation's commercial aircraft became the top antiterrorism priority of the Federal Government in this country. The administration established a firm goal for the number of Federal air marshals so that a high percentage of critical flights could be protected. The exact number of air marshals is classified. However, it is no secret that the Fed-

eral Air Marshals Program has never reached the staffing level deemed necessary to protect the American people in the wake of the September 11 attacks.

Worse, as commercial air travel rebounds to its highest level since the September 11 attacks, the number of Federal air marshals is actually declining, falling 9 percent below the meager staffing level that the program was initially able to achieve and far further below the administration's stated goal.

As air marshals leave the program, budget constraints prohibit the hiring of replacements. The number of air marshals continues to dwindle, and the number of critical flights they are able to cover remains on a steady downward spiral. That is enough to make your hair stand on end.

At a time when Americans have been told, in the starkest terms possible, that al-Qaida is moving forward with plans to attack our homeland, the administration continues to twiddle its thumbs and allow our homeland defenses, including protection of commercial aircraft, to erode.

While the Bush administration claims progress in the war on terror and asserts that it is making the Nation safer, the facts belie the rhetoric. The assertions are hollow. The administration has consistently put homeland security on the back burner. At the prodding of Congress, the administration grudgingly created the Cabinet-level Department of Homeland Security. Senator STEVENS and I wrote language into appropriation bills providing that the head of Homeland Security would require confirmation. No, the administration didn't want to send Mr. Ridge up before the Appropriations Committee until Senator STEVENS and I joined in writing that language. Since the creation of this Department, the administration has failed to provide the Department with the resources needed to make Americans safer.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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The Senate, I am sorry to say, is somewhat complicit in the administration's negligence. The Senate has danced right along to the White House tune. As Brutus said, in scolding Cicero for attempting to toady up to Antony:

Our ancestors would have scorned even a gentle master.

Although the Senate Appropriations Committee passed the Homeland Security bill more than a month ago, it has been languishing—now get this. Let me say that again. Hear me. Although the Senate Appropriations Committee passed the Homeland Security appropriations bill more than a month ago, that bill has been languishing on the shelf since then and has yet to see the light of day on the Senate floor.

That is the bill making appropriations for homeland security. That is the bill for your protection, may I say to the people who are watching this Senate through those electronic lenses. It is your protection, your security, your children's protection, your property, your community. And yet that bill has been languishing, where? On the shelf since then and has yet to see the light of day on this Senate floor.

For some reason which I cannot divine, this do-nothing Senate—hear me—for some reason which I cannot divine, this do-nothing Senate, under the Senate Republican leadership, has bottled up the Homeland Security bill, refusing to allow the Senate to debate it and pass it and send it to the President of the United States.

Here we are, the Senate is about to go out for 45 days, and what about your safety out there? What about the safety of the American people? What about the safety of the communities of this country? What about the safety of the children who attend the schools of this country? What about them? Are they going to have to wait 45 days before this bill making appropriations for homeland defense is to even be called up and debated in this Senate? Yes. We are going to go home. We are going to go home and leave those people unprotected insofar as new moneys are concerned for the Department of Homeland Security.

Fie on the administration that would treat the American people so cavalierly. Here is a bill that has been waiting. This is not Senator STEVENS' fault. His Appropriations Committee, of which I am the ranking member, has reported out this bill days and days ago. We should have taken that bill up and passed it. Where is it now? It is bottled up, and there are no chances—none—of calling this appropriations bill up before we go home for a 45-day recess. Go home. Go home. And yet amidst all of this, this administration has been issuing dire warnings about al-Qaida and what may happen in this country in the meantime, and particularly during a time when the American people are going through the democratic processes of nominating a President and Vice President of the United States.

Now, if that isn't enough to make the hair curl, I would like to know what we need to make it curl.

Unlike the billions upon billions of dollars in funding that the President has demanded from Congress to fight his war in Iraq, he has been strangely silent on the need to appropriate homeland security funding to better protect you, Senators, you, the American people at home.

In the wake of the most recent terrorist alert, one would think—wouldn't one think—that the President of the United States would have called on Congress to provide supplemental funding for new measures to thwart the threat from al-Qaida? Wouldn't one think that?

There are so many weak links in our homeland security network for which added resources could be a true lifesaver. The country needs additional funds to secure our mass transit systems, to increase the inspection of air and ship cargo containers, and, yes, to increase the number of Federal air marshals.

Yet the White House is doing nothing in this regard—nothing, nothing—to press Congress to move on this Homeland Security appropriations bill before we close the doors and go home.

If the reports of pilots and flight attendants and air marshals cited in the Washington Times article are accurate, our Nation's aircraft may be under a renewed threat of attack. If the "credible evidence" cited by the Secretary of Homeland Security and the Director of the FBI is accurate, then the United States is entering an extremely—extremely—dangerous period. And if the chairman of the so-called 9/11 Commission was correct in the assessments he made today—I believe he was—then the United States must face up to the mistakes it made in the past and to the probability of another terrorist attack of even greater magnitude than that which shook the Nation on September 11, 2001.

Yet the White House is doing nothing in this regard. By pretending that funding for homeland security can wait, and by refusing to acknowledge that additional resources are needed to protect the Nation, the administration is callously playing fast and loose with the safety of the American people.

I hope and I pray that America remains safe over the coming months. I hope and pray that the reporting is wrong. I hope and pray that the evidence collected by our homeland security experts is off the mark. I hope and pray that the political conventions will be the scenes of nothing more sinister than elbowing for a better view of the platform. Above all, I hope and pray that the administration will come to its senses, drop its pretension that all is well with homeland security, and provide the financial resources required to truly protect the American people at home.

Mr. President, I reserve the remainder of my time and yield the floor.

Mr. BIDEN. Mr. President, today, the 9/11 Commission released its report and the Commission Chairman, Thomas H. Kearn, said that an attack "of even greater magnitude is possible—even probable." In fact, intelligence assessments have long warned that al-Qaida is seeking weapons of mass destruction to use against Americans in the United States.

The 9/11 Commission specifically recommended today: "Support the Cooperative Threat Reduction Program" and went on to state that it "is now in need of expansion, improvement, and resources." Yet the conference report before us today includes a rescission insisted upon by the other body of \$50 million in fiscal year 2003 funding for cooperative threat reduction programs. In other words, although this bill appropriates \$409 million for these programs in fiscal year 2005, 12 percent of that amount from prior appropriations is being taken away. I think that is a huge mistake.

These programs, known as "Nunn-Lugar" programs after former Senator Sam Nunn and the current distinguished chairman of the Foreign Relations Committee, Senator LUGAR, assist countries of the former Soviet Union in the safe and secure transportation, storage and dismantlement of nuclear weapons and nuclear and chemical materials, as well as preventing the diversion of nuclear materials or equipment. So, we have just cut funding for programs that will help keep nuclear weapons out of the hands of terrorists.

There has been some confusion about the impact of this cut. The official at the Defense Department charges with administering these programs believes that she will be able to move funds around sufficiently to prevent the cancellation of any programs, this time. I hope she is right.

The cooperative threat reduction programs are notorious for how slowly the money is obligated. That is not because the programs are unneeded, or because federal employees are not doing their jobs. Rather, pay-outs are slow because cooperation from the countries concerned and various statutory certifications are required before the funds can be used.

This fact makes the program a tempting target for those looking for a pot of money to raid. But such critical programs must not be looked at as "bill payers" for other defense needs.

Neither should we view cooperative threat reduction programs as "foreign aid." That red herring must be put to rest. As former Defense Secretary Bill Perry used to say, CTR is "defense by other means." There is no more pressing national security need than to secure the sources of weapons of mass destruction and keep them out of the hands of terrorists.

I want to put the House on notice today that I will vigorously oppose further cuts in these programs. And should any deobligation of funds be

necessary because of this cut, I will urge the President and the Secretary of Defense to reprogram funds to prevent the cancellation of programs and contracts.

We have no greater responsibility than to protect our Nation from an attack with weapons of mass destruction and I, for one, will not stand for this critical program to be chipped away until it becomes ineffective.

Mr. CONRAD. Mr. President, today I want to discuss the Defense Appropriations conference report. I want to say upfront this legislation is extremely important. At a time when our soldiers are still in harm's way in Iraq, Afghanistan, and around the world, this legislation provides resources they need.

This bill is all the more important because costs of war in Iraq are spiraling upward. The GAO has just reported that there is a shortfall of over \$12 billion in funding for war costs for fiscal year 2004. This is on top of the \$87 billion supplemental that we passed last year. This year's Defense Appropriations bill makes \$25 billion in emergency reserve funding for war costs available immediately, helping to cover this shortfall and ensure that our troops have what they need in Iraq.

It is important to note that much more is likely to be needed in 2005. CBO recently estimated that military operations in 2005 could cost \$55–\$60 billion. These estimates demonstrate that the Bush administration has failed to budget properly for the war in Iraq and continues to understate the likely cost of these operations.

While this Defense conference report is extremely important, I want to make clear that I am deeply disappointed with the budget provisions that were added to this conference report behind closed doors by the majority, without any debate in the House or Senate. In what I believe is an unprecedented move, the majority has inserted deeming language into this defense conference report—setting the overall fiscal year 2005 discretionary spending level at \$821 billion. This deeming language should have been debated in the Senate. It is entirely inappropriate to add this language outside the scope of conference without any debate by the Senate or by the Budget Committee. Clearly it was added because the majority knows that members of the Senate will not want to oppose a defense bill while our troops are in harm's way.

This is no way to govern. It sets a terrible precedent. Since a conference report is not amendable, the majority is effectively stifling the ability of the Senate to fully debate and amend the deeming language. But that seems to be the point here. The majority does not want to give the Senate the opportunity to fully debate and amend this language.

We wouldn't be in this position if the majority had passed a budget resolution this year. That is where the overall spending and revenue amounts are supposed to be determined. Yet, be-

cause the majority's leadership has refused to restore a strong paygo rule that applies to both tax cuts and spending, the Senate has been unable to get an agreement on a budget. Despite the record deficits we now face, the majority and the Bush administration are still fixated on passing more and more unpaid-for tax cuts. The Bush administration's fiscally irresponsible leadership is driving our nation's finances right off the cliff—and at the worst possible time, on the brink of the retirement of the baby boom generation.

I mentioned that there was no debate on this deeming language. Governing this way is bound to lead to mistakes. In drafting this deeming language, the majority has left out the firewall provisions that guarantee that the gas tax contributions of our Nation's motorists will be used to finance the Nation's highway and mass transit. We have had highway and mass transit firewalls in place for the last 6 years to ensure that funding for those programs is not diverted to other areas. But now, under this deeming language, the firewalls will be eliminated and those highway and mass transit funds could be pilfered to cover shortfalls in other areas of the budget. I think this is a significant mistake—a horrible precedent to set in advance of a highway reauthorization bill.

As I said earlier, the funding for our troops contained in this bill is very important. But I want to be clear how disappointed I am in the way the majority is operating here and in the way they, along with the Bush administration, are dangerously undermining our Nation's fiscal and economic security.

Mr. MCCAIN. Mr. President, today we are considering the conference report for the fiscal year 2005 Defense appropriations act. While I recognize the importance of passing this legislation prior to the upcoming recess, I am once again disappointed that we are acting on the appropriations measure prior to enactment of the Defense Authorization Act.

The responsibilities of authorizers and appropriators are expected to be distinct. The Defense Authorization Act lays out the blueprint for the policies and funding levels for the Department of Defense and its programs. The role of the Appropriations Committee is to allocate funding based on policies provided by authorizations bills. In reality, the appropriators' function, however, has expanded dramatically, and the Appropriations Committee now engages in significant policy decision making and micromanagement, largely usurping the role of the authorizing committees. I remain hopeful that we will complete action on the Defense authorization act when we return in September in order to provide further clarification of congressional intent to the Department of Defense.

In the meantime, enactment of the Defense appropriations legislation is very important, and it will enable us to

continue to meet our obligations to support service members in the fight against terror. The conference report includes many critical funding provisions to which I lend strong support, such as the funding to increase Army end strength by 20,000 soldiers. Unfortunately, although not surprisingly, the conference report also includes a large number of unauthorized and unrequested provisions.

While I appreciate the hard work and the laudable intentions of the members of the Appropriations Committee, the number of earmarks contained in this conference report is alarming. This conference report and accompanying statement of the managers contains close to 2,000 earmarks totaling \$8.9 billion in Member adds.

With Americans deployed across the globe fighting terror, and with looming budget deficits at home, the Congress faces some tough choices. We must find a way to uphold our fiscal responsibility while fully providing for our military needs. The costs that go along with the conflicts in Afghanistan and Iraq demand now, more than ever, a new fiscal sanity in approaching our appropriations bills. A half-a-trillion dollar budget deficit means we simply cannot afford business as usual. We simply cannot continue the binge of pork barrel spending that consumes an ever growing proportion of our Federal budget. While the cost of an individual project may get lost in the fine print of lengthy bills, together, they all do real damage. Collectively, these earmarks significantly burden American taxpayers.

Not surprisingly, along with the growth in deficit spending over the past few years, there has also been a significant growth in earmarks and pork barrel spending. In fact, according to information compiled by the Congressional Research Service, CRS, the total number of earmarks has grown from 4,126 in fiscal year 1994 to 14,040 in fiscal year 2004. That is an increase of 240 percent in 10 years. In dollar terms, the earmarking has risen from \$26.6 billion to \$47.9 billion over the same period.

Based on the calculations of my office, the fiscal year 2002 Defense appropriations act contained \$3.7 billion in pork. The conference report on the fiscal year 2003 Defense appropriations act contained \$8.1 billion in pork. The fiscal year 2004 Senate-passed Defense appropriations act contained well over \$4 billion in pork. This year \$8.9 billion was added in the conference report and the statement of the managers, which is more than twice the number in last year's Senate-passed version of the legislation. This is real money. Every year, countless important military and domestic programs go unfunded or underfunded. I find it hard to understand why we can find the money to pay for member add-ons, but then have to battle to fund concurrent receipt or the survivor benefit plan.

The Joint Chiefs provided a list of critical requirements above what was

provided for in the President's budget request. That list totaled nearly \$18 billion for fiscal year 2005. I believe that if we have the resources, we should do all we can to provide additional defense funding for items and programs which the Joint Chiefs need. But instead, we routinely fund programs just because they are important to a particular state or district represented by a powerful Member of Congress. I find this practice to be a disservice to our military men and women, as well as to all American taxpayers.

Once again, the appropriators' addiction to tanker recapitalization is too great for any amount of medication. The whole tanker love affair reads like a bad novel. It is very suspect that the Appropriations Committee added \$100 million in this conference report under the heading "Tanker Replacement Transfer Fund." Fortunately, the Senate provision prevailed and Chairman Stevens, as he publicly stated he would do, did not allow the House earmark for Boeing 767 tankers to carry through conference. On that point, the Tanker Replacement Fund is muted. Only the report language makes reference to the "current tanker replacement program of record"—that program, undisputedly, is the KC-X program which is in the Air Force's Future Years Defense Program.

Over the past 3 years, I have spoken at length on the Senate floor on the Boeing 767 tanker lease—it is difficult to understand why we are still debating a tanker program when no money has been included in the President's defense budget submitted to Congress. Further, the Senate Armed Services Committee did not authorize any funding for tanker recapitalization for fiscal year 2005. The Chief of Staff of the Air Force, General John P. Jumper, USAF, did not request advance procurement for tanker replacement in his "Fiscal Year 2005 Unfunded Priority List," totaling nearly \$4 billion, which he submitted to Congress in March 2005. The reason is simple—tanker replacement money is not needed now. However, the appetite for this scandal-riddled program is too great, despite the unethical acts of serious misconduct by Air Force officials and the firing of several senior Boeing officers, including the very top of the corporation. It is hard to comprehend why the appropriators continue to put tanker recapitalization ahead of greater priorities for our servicemen and women.

Having said this, I congratulate the appropriators for considering the recent Report of the Defense Science Board Task Force on Aerial Refueling Requirements. Critically, the Defense Science Board task force found there is no compelling material or financial reason to initiate a replacement program prior to the completion of the Analysis of Alternatives, AoA, and the Mobility Capabilities Study, MCS.' Moreover the task force observed that the Air Force greatly overstated both

the amount of corrosion throughout the KC-135 fleet and the KC-135's operation and support cost growth. It also found that the KC-135E can fly to 2040. In other words, the 'dominating rationale' cited by the Air Force to Congress for having taxpayers pay billions of dollars more for leasing Boeing's KC-767A tankers than they would for buying them outright, has been conclusively shown to be without merit. The Air Force's representations on this issue remains a matter of continuing investigative concern. The likelihood that the analysis of alternatives, AOA, and mobility capabilities study, MCS, if done properly, will recommend an acquisition method for these tankers now known to be wholly unsuitable here, is probably minimal. So the Secretary's decision appears fatal to at least the lease component of the proposal.

I look forward to seeing the language in the fiscal year 2005 Defense appropriations act reconciled with the fiscal year 2005 National Defense Authorization Act, which remains in conference. The language in the Senate version of the Defense authorization bill is valuable in that for the first time, it will inject much needed sunlight on a program whose development has been largely insulated from public scrutiny. The tanker provision in the authorization bill ensures that any effort by the Air Force to replace its fleet of tankers is done responsibly, as is the case with most defense programs, however, that has not been the case so far. We should expect no less from the Air Force.

Let me briefly highlight just some of the egregious examples of pork contained either in the conference report or the statement of managers for FY 2005:

\$3.5 million sleep deprivation research. Last night, my staff was here late into the night, conducting tests in sleep deprivation, as they compiled the seventy-plus pages of pork found in the joint explanatory statement. The results: they are tired.

\$3.4 million for USMC Hitchhiker. Back in my day, you could give a Marine a ride for free.

\$1 million for the Deep Digger.

\$1 million for repair to the Biathlon Trail at Fort Richardson, Alaska.

\$1 million to restore the Woody Island and its historic structures.

\$110 million for the Advanced Procurement of F-15s. The air Force has decided to procure the F-22 to replace the F-15. Yet this earmark keeps the F-15 production line open, so I question the necessity of the F-22 procurement in the numbers of aircraft and at the funding levels requested by the Air Force. Apparently we just decided to pay for both.

\$1.9 million, for the Lewis and Clark Bicentennial celebration. You don't need to have the exploration skills of Lewis and Clark to see that this is a path to higher deficits.

\$1 million for the Center for Optical Logic Devices. I am the first one who would pay for logic if we could insert some into our political process, but this earmark won't do it.

\$7.7 million for the Chameleon Miniaturized Wireless System. Chameleons change colors; but one thing does not change is the unrequested provisions in appropriations bills.

\$2 million for the Air Battle Captain program at the University of North Dakota. This provision sends students from West Point to North Dakota for their flight lessons. Instead of letting flight schools compete for the ability to train these cadets, we have earmarked their training to North Dakota. We are putting parochial interests over the necessity to provide the best training possible for the best price to our Army cadets.

\$4.2 million for the LISA inspector. This sounds very interesting.

\$3.4 million dollars for Project Albert. Hey Hey Hey! Seems like Albert could get pretty fat off all the pork in this bill.

\$2.8 million for the C-135 Improved Waste Removal System. We need to improve the way we remove waste from this bill. Maybe combined with the Deep Digger, we can find a way.

I use humor in describing some of these earmarks, but the damage they do is deadly serious. They pull money away from legitimate funding priorities and they waste taxpayer dollars. Each year, many of the same earmarks appear in appropriations legislation, and each year I come to the floor and point them out to my colleagues. Some of the appropriators' perennial favorite projects include:

\$4.3 million for the Smart Truck. This provision, which directly lines the pockets of the auto industry in Detroit, is not exactly smart.

\$7.5 million for the 21st Century Truck. This program has been around for years and not once has the Department of Defense requested funding for it. While I'm sure we all would love to jump into a truck that could be in a James Bond movie, I'm not sure it is appropriate for the Department of Defense to pay for it.

\$5.6 million for the New England Manufacturing Supply Chain. This is above and beyond the \$14 million for this project already earmarked over the last two years.

\$33.9 million for the Maui Space Surveillance System. Why should we provide \$44 million for this system, when there are many observatories in the United States, such as the Lowell Observatory in Arizona, that already offers many of the same benefits as the Maui site?

\$1 million for the Brown Tree Snakes. Once again, the brown tree snake has slithered its way into our defense appropriation bill. I'm sure the snakes are a serious problem, but a defense appropriations act is not the appropriate vehicle to address this issue.

There are many earmarks that funnel dollars to worthy programs—such as breast cancer research, but there is no compelling national defense reason for these items to be on this piece of legislation. This type of critical research should be funded through the Labor/HHS appropriations bill. Our soldiers and sailors need to be provided with the best equipment, housing, and support possible. Scarce defense dollars should be used for these defense purposes, not others.

Once again, the appropriations earmarks in this defense conference report are funneled primarily in to the home States of those Members who sit on the Appropriations Committee. If you look at the plus-ups in the Counter-Drug Activities the earmarking becomes clear. Plus-ups are included for the following States: Florida, Indiana, Tennessee, Alaska, Hawaii, West Virginia,

Kentucky, Nevada, New Mexico. All of these states, I repeat, all of these States have Members on the Appropriations Committee in either the House or Senate. I find it hard to believe that only States represented by appropriators have drug problems.

I could go on and on listing examples of pork in this legislation. We would fulfill our objectives better if we reassessed our spending priorities.

This year's conference report also includes a number of "Buy America" provisions. For example, it prevents the foreign purchase of welded shipboard anchor and mooring chain four inches in diameter and under. Another provision ensures, that all carbon, alloy or steel plates are produced in the United States. Whew. I know we will sleep better at night knowing that all of our carbon plates are manufactured in the U.S. Yet another section prohibits the Department of Defense from purchasing supercomputers from a foreign source.

I continue to be very concerned about the potential impact on readiness of our restrictive trade policies with our allies. Every year, Buy America restrictions cost the Department of Defense and the American taxpayers over \$5.5 billion. From a philosophical point of view, I oppose these types of protectionist policies, and from an economic point of view they are ludicrous. Free trade is both an important element in improving relations among nations and essential to economic growth. From a practical standpoint, Buy America restrictions could seriously impair our ability to compete freely in international markets and also could result in the loss of existing business from long-standing trade partners. Not to mention that procurement policy determined in the Defense authorization bill, not in the appropriations bill.

I also want to comment briefly about a provision contained in this Defense appropriations conference report that is entirely unrelated to funding our national defense needs.

A so-called "technical amendment" was added to the Senate measure at the surprise of a number of us who have been on record for opposing such a provision when efforts were made to add it to other legislative measures. Despite the fact that a member of my staff was on the floor during the debate on the Defense appropriations bill and we had been assured the opportunity to review all amendments prior to their adoption, one amendment was suddenly accepted without the review or concurrence of myself or my staff. That amendment rewrites the Fiscal Year 2004 Omnibus Appropriations bill to allow for 23—States plus the District of Columbia, to receive over \$300 million in additional funding for highway project earmarks. Of course, this project funding is on top of the funding they already receive under what many of us consider to be an unfair formula whereby the gas taxes of donor states

are transferred to pay for the roads in donee states.

With the adoption of this new provision that has been retained in the pending conference report, 23 States plus the District of Columbia, the majority of which are already donee States and receiving more funding than they contribute, will now receive even more money to pay for earmarked projects included in the Omnibus. Again, this funding is in addition to the funding distributed by formula. While the appropriators are taking action to ensure their earmarks are funded outside the formula, 27 States, the majority of which are donor States and already subsidizing other States' highways, will get no benefit, thereby exasperating highway funding inequity.

While it doesn't surprise me that the appropriators found a vehicle for their provision; it does surprise me that they would act in such an orchestrated manner when they knew fully their efforts faced opposition if done so in what most of us consider to be regular order, whereby objectionable amendments are not added just because they are supported by the bill managers. One of the many Senatorial courtesies we all hold dear is that we usually can take Members at their word and that their rights will not be ignored simply for political expediency. Sadly, that was not the case with the adoption of this provision.

The ongoing conference on the highway reauthorization bill is on life-support. If the House, Senate, and administration can reach an agreement on an overall funding level, I will certainly do all that I can as a conferee to ensure that earmarks are counted towards each State's formula distribution. It is only fair that we ensure that once a formula is determined; a formula that I am confident will still include donors and donees, that earmarks are not permitted to further shortchange donor States' highway funding.

I also want to point out that buried at the end of the bill text is a legislative rider that changes our immigration laws. This provision carves out workers in the fish roe processing industry from numerical limitations under the H-2B visa program. While I will be the first to testify to the need to reform our immigration system, and have done so repeatedly, we should not begin to do it on the Defense Appropriations bill by giving a benefit to one small segment of the fishing industry.

This is not the way to legislate. There are severe problems with our H-2B visas. We reached the numerical cap on visas early this year and dependent industries are now struggling to hire the labor they need to operate. The H-2B is just one example of our flawed immigration system; yet carving out a fix for parochial interests; without addressing the overall problem is shortsighted. While owners of fish roe processing facilities benefit from the help powerful members of the Appropriations Committee, every other industry-

facing a labor shortage because of this cap will continue to suffer.

I wish it were not necessary for me to come to the Senate floor with every appropriations bill to criticize the amount of unrequested spending in the legislation. I do so because I believe it is critical for American taxpayers to understand where the money from their pockets is really going. I urge my colleagues to stop "porking up" our appropriations bills. In a time of huge spending deficits and scarce dollars, it is long past time to stop feeding at the trough. We can do better.

Mr. NICKLES. Mr. President, the conference report to accompany H.R. 4613, the Department of Defense appropriations bill for fiscal year 2005, provides \$391.170 billion in budget authority and \$416.011 billion in outlays in fiscal year 2005 for the Department of Defense. Of these totals, \$239 million is for mandatory programs in fiscal year 2005.

The bill further provides \$28.2 billion in budget authority in fiscal year 2004 designated as emergency requirements. Of this total \$26.8 billion is for defense purposes and \$1.3 billion is for non-defense purposes.

The fiscal year 2004 emergency funds for defense include \$25 billion in supplemental appropriations for on-going operations in Iraq and Afghanistan. While the President requested these funds for fiscal year 2005, the conference report makes these funds available on enactment. The conference report also includes a repeal of a \$1.8 billion defense rescission enacted in the 2004 Omnibus Appropriations bill, P.L. 108-199—in effect appropriating a new \$1.8 billion for defense. In total, the \$26.8 billion in fiscal year 2004 emergency defense budget authority generates \$19.3 billion in outlays in fiscal year 2005.

The bill provides \$500 million for wildland fire suppression for 2004. These funds are consistent with amounts assumed in the 2005 budget resolution. The conference report also includes the following non-defense funds: \$685 million for the Iraq embassy and diplomatic security expenses; \$50 million for convention security in New York City and Boston; and \$95 million for Sudan humanitarian assistance.

The bill provides total discretionary budget authority in fiscal year 2005, including emergencies, of \$390.931 billion. This amount is \$1.684 billion less than the President's request and equal to the 302(b) allocations adopted by the House of Representatives. This amount is \$68.4 billion less than fiscal year 2004 enacted levels when supplemental appropriations are included. When supplemental appropriations are not included the conference report provides \$20.8 billion more than last year's enacted level.

The conference report also provides a 2005 302(a) allocation to the Senate Appropriations Committee. This will ensure that adequate enforcement tools are available as the Senate considers

the remaining appropriation bills. The allocation in the conference report is consistent with the levels envisioned in S. Con. Res. 95, the Concurrent Resolution on the Budget for fiscal year 2005.

I commend the distinguished chairman of the Appropriations Committee for bringing this legislation before the Senate, and I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be inserted in the RECORD.

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

H.R. 4613, 2005 DEFENSE APPROPRIATIONS.—SPENDING
COMPARISONS—CONFERENCE REPORT
[Fiscal Year 2005, \$ millions]

	General Purpose	Mandatory	Total
Conference report: ¹			
Budget authority	390,931	239	391,170
Outlays	415,772	239	416,011
House 302(b) allocation: ²			
Budget authority	390,931	239	391,170
Outlays	415,987	239	416,226
2004 Enacted:			
Budget authority	459,374	226	459,600
Outlays	424,429	226	424,655
President's request:			
Budget authority	392,615	239	392,854
Outlays	418,639	239	418,878
House-passed bill:			
Budget authority	390,931	239	391,170
Outlays	415,594	239	415,833
Senate-passed bill:			
Budget authority	383,773	239	384,012
Outlays	401,566	239	401,805
CONFERENCE REPORT COMPARED TO			
Senate 302(b) allocation:			
Budget authority	0	0	0
Outlays	-215	0	-215
2004 Enacted:			
Budget authority	-68,443	13	-68,430
Outlays	-8,657	13	-8,644
President's request:			
Budget authority	-1,684	0	-1,684
Outlays	-2,867	0	-2,867
House-passed bill:			
Budget authority	0	0	0
Outlays	178	0	178
Senate-passed bill:			
Budget authority	7,158	0	7,158
Outlays	14,206	0	14,206

¹ In addition to the amounts shown above, the bill includes \$19.902 billion in emergency outlays in 2005 flowing from the \$27.656 billion emergency supplemental included in Titles IX and X of H.R. 4613 for 2004. The bill also contains \$500 million BA and \$340 million outlays in 2004 for wildland fire suppression.

² This table compares Senate action to the House 302(b) allocation for information purposes only, not for budget enforcement purposes. The House has deemed 302(b) allocations for 2005 based on the 302(a) appropriations allocation set out in the conference agreement on S. Con. Res. 95, the 2005 budget resolution, which the House has passed.

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Alaska.

Mr. STEVENS. Mr. President, may I address a question to my colleague from West Virginia?

There are no more requests for time. We are prepared to yield back the remainder of our time and go to a vote. Is the Senator from West Virginia prepared to yield back the remainder of his time?

Mr. BYRD. Yes.

Mr. STEVENS. Mr. President, not having had any other requests for time, I ask that all time remaining be rescinded.

Mr. REID. Reserving the right to object.

Mr. STEVENS. I withdraw that request.

Mr. REID. If the Senator will allow us the opportunity, we have some people who are not expecting the vote to occur right now.

Mr. President, if the distinguished chairman of the committee will allow a 5-minute quorum call, we think we will have this matter worked out very quickly.

Mr. STEVENS. I withdraw my request and concur and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I direct this question to the distinguished Senator from Alaska, the chairman of the committee, who has worked so hard on this bill. Would he and Senator BYRD allow the vote to begin at 7:15?

Mr. STEVENS. Mr. President, I am very willing to enter into such an agreement. Have the yeas and nays been requested?

The PRESIDING OFFICER. No, they have not.

Mr. STEVENS. I request the yeas and nays on final passage, when that occurs. I ask unanimous consent that the rollcall commence at 7:15.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask the distinguished Senator from Iowa, Mr. GRASSLEY—we have about 4 minutes until the vote occurs. Would he like to speak for that period of time?

Mr. GRASSLEY. Yes.

Mr. REID. I ask unanimous consent that the Senator from Iowa be recognized until 7:15, when the vote occurs.

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

The Senator from Iowa is recognized until 7:15.

Mr. GRASSLEY. I thank the Chair.

(The remarks of Mr. GRASSLEY pertaining to the introduction of S. 2762 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The hour of 7:15 has arrived. The question is on agreeing to the conference report to accompany H.R. 4613. The yeas and nays have been requested.

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 Florida (Mr. GRAHAM), the Senator from Iowa (Mr. HARKIN), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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. 163 Leg.]

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 (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Hatch	Santorum
Cantwell	Hollings	Sarbanes
Carper	Hutchison	Schumer
Chafee	Inhofe	Sessions
Chambliss	Inouye	Shelby
Clinton	Jeffords	Smith
Cochran	Johnson	Snowe
Coleman	Kennedy	Specter
Collins	Kohl	Stabenow
Conrad	Kyl	Stevens
Cornyn	Landrieu	Sununu
Corzine	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Voinovich
Daschle	Lieberman	Warner
Dayton	Lincoln	Wyden

NOT VOTING—4

Edwards	Harkin
Graham (FL)	Kerry

The conference report was agreed to. Mr. STEVENS. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table is agreed to.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I inserted in the RECORD the name of staff members who worked on this bill. I compliment them. I need a round of applause for the staff. This is record time for this bill. It is a very good bill. It is essential. Emergency funds will be available as soon as the President signs it.

I thank all Senators for their cooperation today to get this bill passed before we go home for recess.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

The Senator from Pennsylvania.

THE 9/11 COMMISSION REPORT AND
THE STATUS OF INTELLIGENCE
IN THE UNITED STATES

Mr. SPECTER. Mr. President, I have sought recognition to discuss briefly the 9/11 Commission report and to comment on the status of intelligence in the United States.

In a context where we have been put on notice by the Director of the FBI