about 25 percent of the energy the town needs to run facilities such as schools, Town Hall, and other buildings, officials say. The producer, Pegasus Renewable Energy Partners LLC of Marstons Mills, has yet to begin construction of the solar farm. It's expected to take about a year to begin producing power.

Duxbury is also moving ahead on a plan to lease its capped landfill to a private developer, American Capital Energy, a national company whose customers include the Army, to build a solar energy farm there. Town Meeting backed the project last fall.

The town's move to buy solar energy was made in conjunction with the Alternative Energy Committee's decision to put a hold on the possibility of building a wind turbine. The decision comes at a time when neighboring Kingston is touting the construction of five turbines within its borders. Kingston officials said their town's wind and solar projects together would earn up to a $1 million a year in new revenue.

Until recently Duxbury was planning to build a wind turbine, too. Goldenberg's committee had planned to seek funding from Town Meeting to continue its feasibility study of a wind turbine on town property next to its North Hill golf course.

But that plan came under attack by a group of residents who said they feared that living near a turbine would undermine their health, lower their property values, and alter the neighborhood's residential character. They hired an attorney, produced a report attacking the financial basis of the project, and won a vote from selectmen urging the committee not to seek funds for the project.

Local wind power advocates cried foul. They said opponents were relying on a corporate-quality website and dubious information supplied by an anti-wind lobby with little connection to the town.

But Goldenberg said his group chose the solar option solely based on a comparison of the economics of the wind turbine project relative to the solar deals committee members have been working on. The bottom line, he said, is that a wind turbine on North Hill would produce electricity at $.155 per kilowatt hour versus $.10 per kilowatt hour to buy solar, a 35 percent cost differential.

Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.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.

JORDAN NOMINATION

Mr. NELSON of Florida. Madam President, we are going to vote on Judge Jordan, a Cuban-American Federal district judge, who has been named by the President to go to the Eleventh Circuit Court of Appeals.

Judge Jordan came out of the Judiciary Committee unanimously. As Senator RUBIO and I spoke on Monday, the two of us, in a bipartisan way, do all of the selection of our Federal district judges—and it is all done in a bipartisan way.

In this case, with Judge Jordan being elevated to the Eleventh Circuit Court of Appeals—again, done in a bipartisan way and, indeed, the motion for cloture on the nomination; that is, to stop all debate on the nomination, was passed at a 5:30 vote Monday afternoon by a vote of 89 to 5. So at noon today, we are going to vote on the actual confirmation, which is the second step in the process: after the President nominates, the Senate confirms. Judge Jordan, by our vote today—which I expect will be rather overwhelmingly bipartisan—will ascend to the Eleventh Circuit Court of Appeals as the first Hispanic judge on that Court of Appeals.

I think it is instructive that we could have done all of this Monday at about 6:00 after the vote had occurred 89 to 5 to cut off debate. Yet the Senate rules allow even one Senator, if they object—which one Senator did object—to the waiving of the cloture cutting off debate. The Senate rules say there can be up to 30 hours of debate before the matter at hand is voted on.

Of course, with a vote of 89 to 5, it is pretty well determined, especially since Senator RUBIO and I were the ones who were bringing this judge to the attention of the Senate. Yet here we are.

It is now Wednesday at noon that it is going to take us to get to this judge. This is illustrative of how the Senate is not working. For whatever reason, the Senator who objected—which, by the way, it is my understanding that the Senator had no objection to the judge; it is some other extraneous matter and, therefore, wanted to slow up and throw rocks into the gears of the Senate so that what could have been dispensed with on Monday evening at 6:00 is now taking all the way until noontime on Wednesday, after the 30 hours have run.

For the Senate to function it has to have a measure of trust among Senators. It has to be bipartisan. The two leaders have to get along. In the process, a lot of the work is done by unanimous consent, with the consent of the two leaders, the Democratic leader and the Republican leader. But when things get too hyperpartisan or too ideologically rigid, then that is when the whole process, the mechanism goes out of kilter. It is just another illustration in this time of an election cycle for President where things are highly sensitive from a political, partisan, and ideological standpoint that a judge who is warmly embraced by both sides for his confirmation is getting held up.

I will close by recalling the reason that Judge Jordan got a vote of 89 to 5: He has had a stellar record as a Federal district judge. He has, over the course of his career, clerked, when he came out of law school, for a judge on the Eleventh Circuit. Then he clerked for Justice Sandra Day O'Connor. He went back and was an assistant U.S. attorney, and then went to the bench and has been there for over a decade.

This is the kind of person we want to have in the judicial branch of our government.

I commend him on behalf of Senator RUBIO. The two of us have been in a meeting all morning in duties of another committee, the Intelligence Committee. I commend to the Senate, on behalf of Senator RUBIO and me, Judge Jordan to be confirmed for the Eleventh Circuit Court of Appeals.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

SURFACE TRANSPORTATION ACT

Mr. JOHANNS. Madam President, I rise today to take a few minutes to comment on the bill that the Senate will soon be considering to state why I oppose the bill in its current form. I am speaking of the bill that we oftentimes refer to as the Transportation bill.

I do think this bill does some good things. I supported it coming out of the EPW Committee. It had very sound bipartisan support in that committee.

But there is a serious concern with the bill, a concern for all of us. Specifically, there is a provision in the bill that is what I would call an earmark. However, it is often referred to by our rule as a congressionally directed spending item. Let me again say, purely and simply, it is an earmark. That is why, even though I supported the bill in committee, I did feel very strongly about that provision and I felt compelled to vote against proceeding to the bill and that is why I am here today, filing an amendment.

This provision changes the purpose of an earmark that was included in the previous highway bill. Then the language goes on to do a second thing: It newly directs the money back to the same State where the earmarked project would have occurred, that being the State of Nevada. Let me repeat that. It takes an unspent earmark from a previous highway bill in Nevada and it replaces it with yet another earmark to the State of Nevada. I will go into further detail.

First, the bill identifies any unobligated balances associated with this earmark. The bill reads:

> . . . any unobligated balances of amounts required to be allocated to a State by section such and such of the SAFETEA–LU. . . .

In other words, it goes to the unobligated balances, which was an earmark. If you go back to the previous highway bill, this section 1307(d)(1) is an earmark in that previous bill. But it does not stop there. It does not stop by rescinding that earmark. It goes on to say in the text of the bill we are considering that this money ''shall instead be made available to such State . . .''—the State of Nevada.

So we have rescinded the earmark, but then we said the money goes back to the same State. In other words, the earmarked money is now directed by law, if this were to pass, back to the State where the project was to be built.

Two wrongs do not make a right. If several million dollars is sitting idly

by in an account and we want to rescind those funds, then that is pretty straightforward. We direct the rescission of those funds and do not earmark it to a specific State. If we are going to start the game, though, of earmarking—which I believe is what this does—obviously there will be a lot of other Senators who believe in earmarks who will say I want my turn also. I do not happen to believe in earmarks, but some of my colleagues would say: Look, if you can do this for one State, you can do it for my State. So if every State can direct specific spending to their own State, then we are right back in the business of earmarking.

I will not necessarily speak to the purposes behind the change in the project, although it is pretty clear from newspaper articles out of Nevada that this money is going to be used for a road project. I will leave the defense of the policy to others. What I will say is that the provision without a shadow of a doubt meets the definition of an earmark under rule XLIV of the Standing Rules of the Senate. The bottom line is that the provision in the bill will direct Federal funds to a single State.

Rule XLIV of our standing rules, the Standing Rules of the Senate, as we all know, defines what is a congressionally directed spending item. I will quote that rule:

. . . a provision or report language included primarily at the request of a Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State—

It goes on to say:

locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

There was a reason why that language is included in that rule and it is what is happening here. If you could simply direct funds to your State, then, as I said previously, we are back in the earmarking business.

Furthermore, the bill before the Senate was written based on the understanding that there would be no earmarks. Everybody is running around saying there are no earmarks in the bill. Everybody has been very public about saying that. That posture was well received. It was commended, in fact. It was commended, in my judgment, in part because many understood that a highway bill that included earmarks simply would not pass. In other words, a ''no earmark'' policy was necessary to get this bill done.

So at the moment I am very concerned that we will have damaged the Senate bill, our legislative process, and hurt the chances of a highway bill getting done. I think the highway bill makes a lot of sense for our country, but we have to solve this kind of problem. I cannot support the bill with an earmark for one State, the State of Nevada.

Even the President of the United States has weighed in on this. He has taken a very strong stand. He said, ''If a bill comes to my desk with an earmark inside, I will veto it.''

This highway bill is far too important for us to jeopardize its passage or to invite a veto by the President, just because the provision is very hard to find and buried at page 463.

I think there is a way to move forward on the highway bill, at least as far as this is concerned. I think our State and local leaders are hoping we pass a highway bill. There are a lot of good things that could happen with it, but this has to come out of the bill. This needs to change, and my hope is the Senate will agree to my amendment to do just that.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Madam President, I ask unanimous consent to speak for up to 5 minutes as in morning business.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. FRANKEN). Morning business is now closed.

EXECUTIVE SESSION

NOMINATION OF ADALBERTO JOSE JORDAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The bill clerk read the nomination of Adalberto Jose Jordan, of Florida, to be United States Circuit Judge for the Eleventh Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided and controlled in the usual form.

Mr. LEAHY. Mr. President, today the Senate will finally vote on the nomination of Judge Adalberto Jordan of Florida to fill a judicial emergency vacancy on the Eleventh Circuit. Finally, after a 4 month Republican filibuster that was broken by an 89 to 5 vote on Monday, and after Republicans insisted on two additional days of delay, the Senate will have a vote.

Judge Jordan is by any measure the kind of consensus nominee who should have been confirmed after being reported unanimously by the Judiciary Committee last October. Despite the strong support of his home State Senators, Senator NELSON, a Democrat, and Senator RUBIO, a Republican, Republicans filibustered and delayed this confirmation for months. They prevented the Senate from voting on Judge Jordan's nomination in October, in November, in December, and in January. And it should not have taken another 2 days after the Senate voted overwhelmingly to bring the debate to a close to have this vote.

This superbly-qualified nominee will be the first Cuban-American on the Eleventh Circuit. His record of achievement is beyond reproach. The only statements about this nominee—by me, by Senator NELSON and even by the Republican Senators who spoke—described him as qualified and worthy of confirmation. The stalling, the delays, the obstruction, even the votes against ending the filibuster were all about something else, some collateral issue. They should not have marred this process and complicated this nomination. They should not have delayed this moment when Cuban Americans will see one of their own elevated to the second highest court in the land. I appreciate the attention that Hispanics for a Fair Judiciary and the Hispanic National Bar Association have given this important nomination. Their work will finally be rewarded, as well.

The junior Senator from Kentucky held up this nominee for his own purposes—purposes having nothing to do with the nominee. He did it in order to gain leverage to force a vote on an unrelated and ill-advised amendment. You cannot amend a nomination. So now that he has forced the Senate into 2 days of inactivity, the Senate will finally vote.

As I said yesterday, the goals of Senator PAUL's amendment are already the law of the land. The new conditions on military aid for Egypt, which I wrote with Senator GRAHAM, passed by an overwhelming bipartisan majority and were signed into law just 2 months ago without Senator PAUL's support. Those conditions require certification by the Secretary of State that the Egyptian military is supporting the transition of civilian government and protecting fundamental freedoms and due process. Unlike Senator PAUL's proposed amendment, these conditions again, already the law—do not pose a risk of backfiring on us and on our ally Israel.

Moreover, once this misguided obstruction is ended and the Senate has voted to confirm Judge Jordan to fill the judicial emergency vacancy on the Eleventh Circuit, the Senate will turn back to its work on the surface transportation bill. As Senator BOXER said this morning, that bipartisan bill can save or create 2.8 million jobs. That, too, should be a priority, not a pin