

ORDER OF BUSINESS

Mr. REID. Mr. President, I filed cloture on the substitute amendment and the bill itself. I have had a conversation with the Republican leader earlier this evening. I am hopeful we can get a list—a short list—of amendments and a path to complete work on this bill as soon as possible. The FISA bill is something we have to do before we leave. I have said that several times this week. I have had conversations with several interested Members. I am hopeful we can get an agreement to complete action on this matter tomorrow.

The DOD authorization conference report, they have completed that work. It has been tedious and very hard. Senator McCain and Senator Levin have worked very hard. We are hopeful we can lock in an agreement to vote on that tomorrow. We also have to confirm three district court judges. We hope to be able to do that tomorrow. We have a lot of work to do.

The House, as we speak—how to say this in a kind way. They are trying to come up with something. They have had to work all day to come up with something. We are waiting for their “something.”

I 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. MERKLEY. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. MERKLEY. Mr. President, I ask unanimous consent to speak as in morning business.

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

NATIONAL DISASTERS

Mr. MERKLEY. Mr. President, tonight we are wrapping up affairs here on the floor, and what is going on right now is that the main substitute amendment that had a whole series of other amendments attached to it that has been the result of the work over the last couple of days has been withdrawn, so we are back to square one in terms of addressing a series of national disasters around the country.

Tomorrow, with the new amendment, we will start off the day with a new basic amendment and a new chance to have amendments to the replacement. I explain this simply to say that a number of Senators who had amendments over the last couple of days will come back tomorrow and will ask to have their amendments be considered. I will be one of them, and I wanted to explain why.

In my home State of Oregon, we had the worst forest fires in a century this summer, and the devastation to ranchers and farmers was enormous. There was the loss of forage on their own land, the loss of forage on BLM land,

certainly the loss of livestock, and the loss of miles of fencing in these fires. Basically, whole ranching enterprises were destroyed.

The largest of these fires was larger than the Presiding Officer's State, the State of Rhode Island. That is an enormous fire. That was just one of the many fires we had sweeping our State, and this was not just something that happened in Oregon. This happened in many States this summer because it goes along with something else, which is we had the worst drought in many parts of the country. So we have farmers and ranchers across this Nation devastated this past summer by drought, devastated by fires which were larger because of drought conditions.

Normally we would have had disaster programs to assist with these disasters. These disaster programs were authorized in the farm bill. In this Chamber we had a bipartisan coming together. We passed the farm bill, and we sent it over to the House. There it has sat, month after month after month, while our farmers and our ranchers all across this Nation faced these disasters with no assistance, no assistance in a situation in which they should be able to expect assistance. It is the tradition of our Nation that when there are extraordinary disasters, we rally together, respond and rebuild those communities, whether they be urban disasters or whether they be rural disasters. But because the farm bill has not been passed, not gotten to the President, these disaster programs have not been reauthorized, and our farmers and ranchers watch us and wait. They say where is our government, our partner, when disaster occurs?

They know the tax dollars they pay go into the central government and have many times been allocated to others around this Nation facing disasters of all kinds—earthquakes, hurricanes, floods, droughts. But these individuals, now that Mother Nature has struck them, stand waiting.

We have an opportunity tomorrow to right this wrong. We have a bill that is about the enormous terrible disaster that affected our Northeastern States in the form of Hurricane Sandy.

We should be absolutely expedient in taking care of communities so dramatically affected. But at the same time, isn't it right that we take care of the other communities around this country that have faced disasters this last year that are waiting on us?

I invite my colleagues to come to the floor and explain to me if they feel it is not right to take care of the other disasters we have had this last year. I would like to be able to go to the ranchers and farmers in my State and explain to them the arguments that others might bring about why their disaster, the destruction of their livelihood that the great hand of Mother Nature struck, why we shouldn't address and assist them when we are assisting others so dramatically affected around

this Nation. Quite frankly, I have no answer. I have no answer. I can't think of an answer.

Will any of my 99 colleagues come to me and explain why we shouldn't pass this amendment tomorrow, the amendment that I will propose? I will tell you that a number of us came together to propose this amendment. Senator STABENOW, Senator MCCASKILL, Senator BAUCUS, Senator WYDEN, Senator TIM JOHNSON, Senator FRANKEN, Senator TOM UDALL, representing all kinds of parts of our Nation, who understand the impact that drought has had, understand the impact the fires have had. They have come together from different parts of the Nation to say we are in this together. Let's not leave stranded our ranchers and farmers when we gather to debate tomorrow. Let's let this amendment be brought forward, and let's get it passed as part of this very appropriate response to this very terrible disaster called Hurricane Sandy.

LIMITED SERVICE EXCLUSION

Mr. PRYOR. Mr. President, I rise today to address an issue that has arisen between companies within the moving industry. Recently, a group of full-service moving companies has attempted to change rules established by law, regulations, and court findings. These full-service moving companies are aiming to undermine the clear intent of Congress by avoiding the formal rulemaking or legislative process. The changes sought would benefit their companies and damage their competitors within the sector.

In recent years, full-service moving companies have faced new competition from a growing number of companies that allow consumers a “do it yourself” alternative to more expensive, traditional movers. Some general freight motor carriers have been offering “do it yourself” consumers an option for moving: a non-household goods motor carrier drops off empty containers or trailers at the consumer's doorstep for the consumer to load, the consumer loads the trailer—individually, with help from neighbors, or by hiring a third party. After loading, the consumer calls the container company or freight carrier to pick up the container or trailer, the container company then arranges for an authorized general freight or flatbed carrier to pick up and haul the loaded container, dropping it off on the requested delivery date for the consumer to unload; and the carrier returns to pick up the empty container or trailer when unloaded. The customer is able to purchase the level of service he or she wants and manage the process themselves from start to finish.

Mr. President, that is precisely the type of service alternative Congress intended to encourage when it included the so-called “Limited Service Exclusion” in the “Household Goods Mover Oversight Enforcement and Reform Act

of 2005," enacted as §§ 4201–16 of Pub. L. No. 109–59, 119 Stat. 1144 (2005), now known as "SAFETEA-LU." This Limited Service Exclusion, codified at 49 U.S.C. § 13102 (12)(c), expressly states that:

The term [household goods motor carrier] does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).

I sponsored this provision and worked with others in Congress to incorporate this Limited Service Exclusion into law and want to be clear of the intent of the law. The "Limited Service Exclusion" was intended for the non-household goods motor carrier that drops off empty containers or trailers, which are loaded by the consumer or a third party, and then delivered or stored by the container company or freight carrier. The exclusion's intent was to keep portable container supply companies and general freight carriers from the regulations required for household good movers.

The written guidance that has been requested by the full-service moving companies are pushing would ignore the Limited Service Exclusion's intent by blocking portable container supply companies and general freight carriers from relying on this statutory exclusion to work together and with the do it yourself consumer to move the consumer's belongings to his new home. That requested interpretation would reverse decades of legal precedent and rule that if the container supplier or general freight carrier refers the consumer to a third party who provides the labor to load or unload the containers and trailers, and the consumer elects to use those services, this third party automatically becomes the "agent" of that container company or trucking company. This attempted change of the statute with its anti-competitive effects is exactly the opposite of what I and my colleagues in the Senate and the House who voted for SAFETEA-LU intended.

The traditional moving companies urge the FMCSA to adopt a definition of "agent"—as such term is used in the Limited Service Exclusion. This would result in greater costs to consumers and will prevent container and general freight carriers from using the Limited Service Exclusion as Congress intended. The FMCSA already has embedded in its regulations the ideal basis for arriving at a definition of "agent" that is consistent with our intent. The FMCSA's own regulation, 49 CFR § 375.103, requires it to apply the "ordinary practical meaning" to the term "agent." The "ordinary practical meaning" of the term agent is well settled as a matter of black letter law and there is no cause for a federal agency to attempt to further interpret such a well-established term. Simply put, the definition compels a finding that: as long as the container or freight carrier

does not control the third party who the consumer engages to load and unload the container or trailer, the carrier does not authorize the third party to act for and on behalf of this carrier, and the third party does not agree to act on behalf of the carrier, then the third party is not the agent of the carrier. Facilitating the consumer to contract with a third party that provides loading and unloading services does not create an agency relationship as we intended that term in the Limited Service Exclusion. Moreover, on a related issue, the Limited Service Exclusion should remain intact even if the carrier receives compensation for facilitating the consumer to contract with packing and loading providers, provided that the carrier does not have an agency relationship with the packing and loading providers.

Mr. RUBIO. Mr. President, as Senator PRYOR points out, the clear intent of Congress in adopting the Limited Service Exclusion section of SAFETEA-LU was to ensure cost-conscious, budget-driven consumers will continue to have the option to choose low-cost moving services for their goods. Although I was not a member of Congress when SAFETEA-LU was passed, you can plainly see that Congress made it clear in another section of SAFETEA-LU that it was codifying and preserving decades of law developed and perpetuated at the FMCSA, its predecessor the Interstate Commerce Commission, and the courts that authorize general commodity motor carriers lacking household goods authority to transport household goods as long as they do not perform specialized household goods related services such as loading and unloading. Here is what Congress added to SAFETEA-LU, now codified at 49 U.S.C. § 13102(12)(B):

The term ["household goods motor carrier"] includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

The definition of "household goods motor carrier" that Congress sought to preserve and perpetuate focuses on the nature of the services performed, not on the commodity itself. If the motor carrier provides specialized household goods related services—packing, loading, unloading, etc.—for the consumer, the carrier must be deemed a "household goods motor carrier" with respect to the goods it transports under a long line of court, FMCSA and ICC decisions and implementing regulations. Conversely, if the carrier (or its agent) does not perform those specialized services in conjunction with those household goods, it may transport them without being registered and regulated as a "household goods carrier." This emphasis on the nature of the carrier services performed and not the nature of the commodity itself is also at the very heart of and reflected in the

appropriately named "Limited Service Exclusion." The interpretation that the traditional movers advocate would overturn, not preserve, agency precedent and arrive at a definition of "household goods motor carrier" that unlawfully contravenes the service-based exclusion codified in 49 U.S.C. § 13102(12)(c).

Mr. PRYOR. Along with the growth of general freight motor carriers and container-supply companies catering to the needs of do-it-yourself consumers, we have seen some of these same companies become regulated property brokers and step forward in this capacity to assist these consumers. For a negotiated fee, they offer to arrange with portable container companies and general freight carriers to place the containers and trailers for loading and to have them transported to their destinations when loaded. To counteract this middleman-service, the full-service traditional moving companies are now urging the FMCSA to require do it yourself consumers desiring broker assistance to engage only brokers registered with and regulated by the FMCSA as "household goods brokers" to make these arrangements on their behalf and to require them to use only registered, full-service "household goods motor carriers" to perform the underlying transportation.

Their principal argument relies upon a false negative inference they want the FMCSA to draw from the absence of a similar "Limited Service Exclusion" from the "household goods broker" definition for brokers that arrange household goods moves for do-it-yourself consumers. This effort at changing the meaning of the statute further obstructs the intent behind the Household Goods Mover Oversight Enforcement and Reform Act of 2005. We want the consumers to have access to low-cost transportation services as an alternative to the traditional full-service moving companies when motor carriers, lacking specific household goods authority and not providing specialized household goods related services, perform the underlying transportation in reliance upon the Limited Service Exclusion codified at 49 U.S.C. § 13102(12)(c). No broker-specific Limited Service Exclusion is required: if the underlying motor carrier service does not provide packing and loading services, then the motor carrier need not hold household goods authority from the FMCSA. In turn, the broker engaged by the consumer to arrange the transportation (without any packing and loading services) likewise need not hold household goods broker authority and need not use a household goods motor carrier. Accordingly, a motor carrier authorized to haul property (excluding household goods) can perform the move.

Mr. RUBIO. Mr. President, as Senator PRYOR has articulated, the FMCSA should not suppress competition in the moving industry, and my fear is that this would happen if the

agency eliminates an important moving option for do-it-yourself consumers. This would economically hurt the principal users of portable storage companies, namely the middle class, military, students and other price-conscious consumers. For these reasons and the others mentioned by my colleague, it is my sincere hope that the FMCSA preserves the rights of consumers, as intended by Congress, to ready and unfettered access to lower cost options with respect to moving their household goods.

TRIBUTES TO DEPARTING SENATORS

DAN AKAKA

Mr. LEVIN. Mr. President, for the last 22 years, DANIEL AKAKA has represented the people of Hawaii in this body. They have been the better for his service, and I have greatly appreciated the wisdom, humility, and passion with which he has served here.

One issue on which we have been able to work closely as fellow members of the Homeland Security and Governmental Affairs Committee is oversight of the Federal workforce, a key issue for his State and for taxpayers everywhere. Senator AKAKA's passion for Federal workforce issues comes from his passion for public service and for effective government. Just in this Congress, I was an original cosponsor of his Federal Whistleblower Protection Act, to strengthen the law protecting Federal employees who bring to light fraud, waste, and abuse in Federal programs. That Akaka bill is expected to be signed into law before the end of the year. Also this Congress, I was proud to cosponsor his Hatch Act Modernization Act to allow hard-working employees of State and local governments, who are covered by the Hatch Act, to serve as elected officials in their communities.

In addition to his focus on Federal workforce issues, Senator AKAKA has long been a valued member of the Armed Services Committee. We have worked together on legislation to reform Defense Department business and financial management systems; strengthen oversight and accountability of wartime contracting; and strengthen the Defense Department's management of the substantial funds it spends to acquire property and services.

Senator AKAKA joined in 2002 with Senator INHOFE to form the Senate Army Caucus, and through this bipartisan group they have focused welcome attention on the programs and needs of our Army. Senator AKAKA, himself an Army veteran, has been an important source of insight into the challenges facing our soldiers and their families.

Of course, as the former chairman of the Veterans' Affairs Committee, Senator AKAKA has long demonstrated an intense dedication to those who have helped defend our Nation. His steadfast advocacy for veterans health programs,

education benefits, and other important programs has made a significant and lasting impact on the lives of veterans and their families.

When people describe DANIEL AKAKA, one of the first words used to describe him is "humble." He is indeed that. He has been a dedicated and principled servant of the people of Hawaii and our Nation, an unfailing ally of our veterans and their families, and a valued colleague and friend. I will miss him, and I will always remember how he taught us that gentleness and effectiveness are not mutually exclusive characteristics.

HERB KOHL

Mr. President, in his four terms representing the State of Wisconsin in this body, Senator HERB KOHL's focus has been precisely where it should be: the welfare of the people of his State and of our Nation. Whether in supporting American manufacturers and the jobs they provide, in fighting for protection from crime and for adequate nutrition for our children, in protecting senior citizens from elder abuse, or in preserving the Great Lakes that our two States share, Senator KOHL has accomplished much on behalf of American families.

I have been fortunate to work closely with Senator KOHL on issues of vital importance to our States. He has long been a strong supporter of the Manufacturing Extension Partnership, which helps U.S. manufacturers with technical support and services that make them more efficient and competitive in the global marketplace. His support for adequate MEP funding has made a significant difference for American companies and workers.

Now, we in Michigan bow to no one in our love for the Great Lakes, but even I would admit that Wisconsin, second only to Michigan in its length of Great Lakes coastline, is a close competitor. As a member of the Great Lakes Task Force, which I cochair, he has supported cleanup of toxic hot spots, the fight against invasive species, protecting Great Lakes water quality, and sufficient funding for the Great Lakes Restoration Initiative.

We have also shared an interest in consumer protection. Senator KOHL chairs the Judiciary Committee's Subcommittee on Antitrust, Competition Policy and Consumer Rights, and from that platform, he has battled those who would prey on American consumers, whether they are abusive credit card companies or oil-exporting cartel nations.

But where Senator KOHL has left what may be his most lasting impression is in his hard work on behalf of our Nation's most vulnerable citizens: children and seniors. He has long advocated solutions to help make college more affordable. He has helped expand the availability of nutritious breakfasts for school-age children and programs to help parents afford food on the table for their families. He has worked to strengthen afterschool pro-

grams. And in 2007 and again in 2008, he introduced the Patient Safety and Abuse Protection Act, which allowed employers to perform background checks on nursing home employees to help prevent elder abuse. When this legislation was included in the Affordable Care Act in 2009, it was a major step forward for patient safety.

I will miss working with HERB KOHL on these and many other issues. I will miss the opportunity to give him a hard time whenever our Detroit Pistons beat his Milwaukee Bucks. I hope we can continue the important work he has helped move forward: protecting good jobs, our Great Lakes, our students, and our seniors.

DANIEL K. INOUE

Mr. WHITEHOUSE. Mr. President, today the State of Hawai'i, the Senate, and the United States mourn the loss of Senator Daniel Inouye.

Observers of the Senate today know Chairman Inouye as a poised, soft-spoken statesman: courteous and collegial; shunning of the spotlight; above the petty churn of the partisan fray. But historians will remember him as a great patriot, a fierce warrior, a brave pioneer, and a great leader.

Chairman Inouye's unflinching commitment to his country withstood both the moral threat of having his family deemed "enemy aliens" and the direct physical threat of Nazi firepower. His famed "Go For Broke" 442nd Regimental Combat Team was made up of Japanese-American volunteers, but even among this exceptionally decorated group of men, Second Lieutenant Inouye exemplified exceptional bravery and sacrifice in what Winston Churchill described as the war "to confront not only military but moral aggression."

The fight to see the American values of freedom, justice, and equality fulfilled would continue beyond the war years and throughout Chairman Inouye's lifetime of service to his home state and his country. The new State of Hawai'i sent him to Washington as part of its very first delegation. The first Japanese American elected to Congress, he has been a champion of civil rights for women, Asian Americans, Native Hawaiians, and African Americans. Indeed, Chairman Inouye was the last surviving member of the Senate to have voted for the Civil Rights Act of 1964. He also ferreted out corruption at the highest level of government, serving on the Senate's select committee on the Watergate scandal, and chairing the investigation of the Iran-Contra arms affair.

But Dan Inouye was first and foremost a servant of the people of Hawai'i. Ever grateful for the faith they entrusted in him year after year, he worked to make sure they had every opportunity to achieve the full potential of the American Dream. I was honored that he joined me as an original member of the Senate Oceans Caucus,