

1 EXECUTIVE BUSINESS MEETING TO CONSIDER THE HIGHWAY
2 INVESTMENT, JOB CREATION, AND ECONOMIC GROWTH ACT OF 2012
3 TUESDAY, FEBRUARY 7, 2012
4 U.S. Senate,
5 Committee on Finance,
6 Washington, DC.

7 The meeting was convened, pursuant to notice, at
8 3:06 p.m., in room SD-215, Dirksen Senate Office
9 Building, Hon. Max Baucus (chairman of the committee)
10 presiding.

11 Present: Senators Rockefeller, Bingaman, Kerry,
12 Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez,
13 Carper, Cardin, Hatch, Grassley, Snowe, Kyl, Crapo,
14 Roberts, Enzi, Cornyn, Coburn, Thune, and Burr.

15 Also present: Ryan Abraham, Tax Counsel; Nicholas
16 Wyatt, Tax and Nomination Professional Staff Member;
17 Thomas Lynch, Legislative Assistant, Office of Senator
18 Baucus; John Tanner, Legislative Assistant, Office of
19 Senator Hatch; Joshua LeVasseur, Deputy Chief Clerk; and
20 Danielle Edwards, Deputy Clerk.

21 Also present: Thomas Barthold, Chief of Staff,
22 Joint Committee on Taxation.

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26 LISA DENNIS COURT REPORTING
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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. The committee will come to order.

5 Today the committee has before it a Chairman's mark
6 of an original bill entitled, "The Highway Investment,
7 Job Creation and Economic Growth Act of 2012". The
8 results of today's mark-up will be folded into the work
9 of the Environment and Public Works Committee, and the
10 Commerce Committee, and the Banking Committee for
11 consideration by the entire Senate.

12 Laying out his vision for the 1990 highway bill,
13 President George H.W. Bush said this: "No sector is more
14 important to the American economy, because as world trade
15 grows even larger as we continue our leadership in an
16 increasingly global society, we will become even more and
17 more dependent on transportation than we are today."

18 President Bush gave those remarks more than 20 years
19 ago. They were delivered before the fall of the Soviet
20 Union opened up a vast European Union that is now a major
21 American trading partner. He gave them before the
22 passage of NAFTA, the largest north-to-south trading zone
23 in history.

24 They came before the rise in Asian imports led by
25 China that now flood our shores and our highways. Two

1 decades after President Bush spoke these words, our world
2 is now a much different place and our competitiveness
3 relies even more on a sound transportation system.

4 This year the United States dropped to the fifth
5 most competitive economy in the world. This was in part
6 due to our roads, which were ranked 20th best in the
7 world behind Canada and countries in western Europe,
8 Asia, and the Middle East.

9 Congestion cost our economy more than \$115 billion
10 in wasted time, lost worker productivity, and fuel spent
11 in 2010. American families and businesses need safe and
12 modern roads, bridges, and mass transit systems, everyone
13 agrees. So we are here today to make the tough decisions
14 about how to pay for them.

15 There have been more than 20 bipartisan staff
16 meetings over the past several months. Members have also
17 met several times to discuss these issues. We will now
18 consider the best way to raise sufficient funding for the
19 Highway Trust Fund.

20 Keeping this fund solvent is how we ensure that
21 America's economy has the transportation system it needs
22 to grow. The authorizing committees have reported
23 legislation to provide the States with funding for
24 highways, transit, and safety programs since September
25 2013. They rely on us to raise the needed money.

1 More importantly, the American people are relying on
2 us. They are relying on us to provide the funds they
3 need for their safety and mobility. They need us to
4 ensure the funds will be there to help create jobs at a
5 time when the construction industry still faces
6 unacceptably high unemployment.

7 Thanks to the advice from Senator Hatch and other
8 committee members, the Chairman's mark raises \$3.7
9 billion for the Highway Trust Fund by moving money from
10 the surplus Leaking Underground Storage Tank Trust Fund.

11 It is important to note that this funding comes from the
12 fuel tax, the primary funding source for the Highway
13 Trust Fund.

14 Where we cannot find more revenue from the Highway
15 Trust Fund's usual funding sources, we have focused on
16 funding that there is a nexus to transportation. We have
17 therefore explored funding from transportation and energy
18 sources. These include revenues from import tariffs on
19 foreign cars. In cases like the gas guzzler tax where we
20 have to move money that currently goes into the general
21 fund of the Treasury, we have replenished the general
22 fund with new revenue.

23 Partly we do this by closing tax gaps rather than
24 raising taxes. These things are hard to do. Each of us,
25 if we were king, would craft a different package. But we

1 are a committee of 24, the Finance Committee, so the
2 package I offer today is my best assessment of a
3 consensus product.

4 We have to recognize that we cannot fix our budget
5 deficit by refusing to address our infrastructure
6 deficits. If you need proof of that, the highway bill
7 creates jobs. Look no further than my home State of
8 Montana. The last highway bill helped create and sustain
9 more than 18,000 good-paying jobs across the State.
10 We're a highway State. In fact, we call highways our
11 lifeblood. We often like to say that we're the one big
12 small town with really, really long streets.

13 Recently, businesses and labor leaders have come
14 together in Montana, along with tribal and contract
15 groups, to cheer on Congress for working together on the
16 highway bill. We understand, as do folks in other
17 States, that despite our differences, one thing we all
18 have in common is that everyone relies on our
19 infrastructure.

20 Everyone must work together to wisely steer our
21 Nation's transportation policy in a direction that takes
22 care of our recovery economy. We owe it to our kids and
23 our grandkids, when we leave our country and our
24 infrastructure, to leave it in better shape than we found
25 it. The simple fact is, we need infrastructure. Our

1 economy cannot run, much less grow, without dependable
2 highways and dependable infrastructure. The
3 infrastructure funded by this bill creates jobs, jobs
4 that Americans need right now.

5 As President Bush cautioned in those remarks, "For
6 over 200 years since the days of barges and riverboats,
7 America has grown and prospered with our transportation
8 system. Our competitive stake will depend no less on
9 American transportation leadership in the future. Still,
10 too often we take for granted the highways that bind
11 America together."

12 So let us heed President Bush's warning, let us
13 ensure we have the infrastructure for our country to
14 compete and thrive in the world. This is important. Let
15 us not take our highway system for granted. Let us work
16 together today to fund the highway system our economy and
17 our country need.

18 I now recognize Senator Hatch for any comments he
19 may wish to make.

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1 OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR
2 FROM UTAH

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4 Senator Hatch. Well, thank you, Mr. Chairman.
5 First off, I want to thank you for maintaining the
6 Finance Committee's key role in reauthorizing the highway
7 program. It is critical to the functioning of the Senate
8 that its committees be allowed to perform their work.
9 The authorizing committees have acted. Now it is time
10 for this committee to do its part.

11 Taking this bill through the Finance Committee
12 process allows for a full examination of the funding
13 stream for the current program. The formality of this
14 process, with the opportunity to debate and amend the
15 Chairman's mark, ensures that the policy is properly
16 vetted for everyone to see.

17 The challenges for this committee are significant,
18 since the agreement that informed the last highway bill
19 has been taken over by events. Back in 2004, this
20 committee and this committee alone found roughly \$24
21 billion in additional revenue for the next six years of
22 the program. Some of that revenue consisted of permanent
23 policy changes that raised revenue in the trust fund and
24 did not impair the trust fund. Other policy changes
25 grossed up the trust fund and then used unrelated general

1 fund revenue raisers to hold harmless the general fund.

2 In the meantime, demands on the trust fund grew.

3 What is more, the recession and other factors caused
4 highway revenues to decline. What that means is that the
5 meeting of the minds that led to the 2005 highway bill,
6 with this committee in the lead, has come to a dead end.

7 Trust fund spending far outpaces trust fund revenues,
8 and there is no getting around the fact that we need to
9 find a new path that directly aligns trust fund revenues
10 and trust fund spending.

11 But a consensus product is not enough if it does not
12 fundamentally address this critical shortcoming with
13 current Federal highway financing. As she often does,
14 Lady Margaret Thatcher provides us with some guidance. In
15 1981, she offered some thoughtful and cautionary words
16 about the perils of a misguided consensus, a consensus
17 that has as its chief object getting something done
18 rather than getting something done right.

19 This is how Lady Thatcher put it: "For me,
20 pragmatism is not enough. Nor is that fashionable word
21 'consensus.' To me consensus seems to be the process of
22 abandoning all beliefs, principles, values and policies
23 in search of something in which no one believes, but to
24 which no one objects -- the process of avoiding the very
25 issues that have to be solved, merely because you cannot

1 get agreement on the way ahead.”

2 Now, Mr. Chairman, consensus on highway funding is
3 not enough unless it addresses costs and benefits in a
4 meaningful way that provides a foundation for lasting and
5 sustainable Federal policy.

6 On highway funding, in 2005, we reached a basic
7 agreement. For a time, that consensus worked. We
8 provided more trust fund receipts revenue for the
9 authorizers to spend and they spent it. Today, we are
10 maintaining that level of spending and patching the hole
11 that opened in the trust fund.

12 I am afraid we have strayed from the principles that
13 formed the basis of the trust in the Highway Trust Fund.

14 These principles were articulated in a letter sent by
15 myself and others on my side last year. The amendments I
16 filed follow up on that letter.

17 Now, what are those principles, some might ask?
18 One, users of the Highway Trust Fund pay for the building
19 and maintenance of the roads. Second, revenues and
20 spending should line up on a year-by-year basis. Third,
21 we should avoid spending down the balance of the trust
22 fund. That is, we should keep a healthy cushion to
23 ensure against funding crises and disruption. Fourth, we
24 should provide for as long and as multi-year
25 authorization as possible. And fifth, since the Finance

1 Committee moved the revenue level up significantly in
2 2005, we should preserve it and not raise taxes now.

3 Mr. Chairman, you have labored hard to meet these
4 principles. We on our side appreciate all of your
5 efforts in that regard. That is why I filed a few
6 amendments--four, to be precise. There were not an
7 excessive number of amendments filed to the Chairman's
8 mark. Republicans filed 13 in total. Democrats filed
9 more than twice that number.

10 Today we will debate the merits of the Chairman's
11 mark. It is by definition a short-term measure. We will
12 have to look to the future to get back on the road to a
13 sustainable long-term highway financing system. That
14 goal is in the long-term interests of all Americans.

15 Thank you, Mr. Chairman.

16 The Chairman. Thank you, Senator.

17 I would now like to recognize Senators and ask them
18 to speak no more than four minutes. According to the
19 early bird, Senator Kerry, you are next.

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1 OPENING STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR
2 FROM MASSACHUSETTS

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4 Senator Kerry. Thank you, Mr. Chairman. First of
5 all, thank you for bringing this today and for the work
6 you have done to try to get us where we are.

7 I have an amendment that I could talk about later.
8 I want to talk about it now because it is rare that I get
9 10 colleagues on the other side of the aisle to chat with
10 for a moment. I am not going to ask for a vote on this
11 amendment today. It is not ripe, and that is mostly
12 because of a question of timing.

13 But this is an idea that Senator Hutchison, Senator
14 Graham--Lindsey Graham--and Senator Mark Warner are all
15 co-sponsors of. I have to say to my colleagues, it is an
16 idea that I hope we could step outside of the politics,
17 the normal sort of approach to some things around here
18 and really think about it on the merits.

19 Our current transportation funding system, we all
20 know, is simply not adequate to get the job in America.
21 We are going to have \$5 billion a year for three years,
22 about \$10 billion a year to the \$30-plus whatever that
23 goes into the system, maybe a total of \$40 billion a year
24 over the next couple of years.

25 But the experts tell us that we need \$2 trillion of

1 expenditure on infrastructure just to bring America up to
2 par, up to snuff, to be competitive. They say that we
3 are going to need about \$250 billion a year on highways
4 alone if you are really going to bring America back to
5 where it needs to be, let alone rail, all the other
6 things we need to do.

7 The bottom line is, this does not get it done, and
8 we know it does not get it done. China is spending 9
9 percent of GDP on infrastructure. Europe spends 5
10 percent of GDP on infrastructure. The United States is
11 only spending 2 percent of GDP on infrastructure. So we
12 have a huge deficit. We are not even keeping up and this
13 is critical to our competitiveness. Every billion
14 dollars of expenditure on infrastructure equals somewhere
15 between a minimum of 27,000 jobs, a maximum of somewhere
16 in the vicinity of 35,000, 36,000 jobs. That is per
17 billion.

18 Senator Graham, Senator Hutchison, Senator Warner,
19 and I are proposing that we create what other countries
20 have created, what States have but States cannot step
21 across their State lines to make this work on a national
22 basis, and that is an infrastructure bank.

23 Now, I know the instant sort of conservative and/or
24 Republican response says, whoa, the last thing we need is
25 another Federal entity. Is that not going to be like

1 Fannie Mae, Freddie Mac, et cetera? The answer is, plain
2 and simply, no. It is completely independent. Unlike
3 Fannie Mae and Freddie Mac, it does not issue any stock,
4 it is not for profit, it is self-financing. What it
5 does, is attract private capital from other countries,
6 from sovereign funds.

7 The Chinese have told us they are prepared to invest
8 in American infrastructure build-out. The reason is that
9 these projects only qualify if they are revenue
10 producing. That means a water project, an energy project,
11 water treatment, there are various kinds of projects,
12 some transportation projects where there are tolls, et
13 cetera.

14 Only revenue-producing projects qualify. There is a
15 significant set-aside for rural communities in America.
16 The rural communities would qualify for a \$25 million or
17 up project and urban would be, or the rest of American
18 would be at about \$100 million.

19 Now, let me just very quickly -- I am about to run
20 out of time. Why do you need to do this? Why does this
21 make sense to the private sector? Senator Kyl asked me
22 during the course of the Super Committee deliberations
23 where we were talking about it, if this is such a good
24 deal why does it not happen anyway?

25 Well, the answer is this: private investors who want

1 to invest in our infrastructure are telling us that there
2 is a gap in the U.S. infrastructure financing system.
3 Banks are not making large, long-term project loans. The
4 municipal bond market is suffering and cannot access
5 large pools of capital, such as pension funds. Not
6 allowed to.

7 So the result is, you cannot make it work unless you
8 can offer, for a \$10 billion total investment, you can
9 invest \$650 billion into infrastructure by leveraging the
10 private sector, 50 percent of every deal has to be
11 completely privately leveraged, there is a loan guarantee
12 and loans are repaid and there is a whole system which I
13 will go through.

14 In the next days I want to sit down with each and
15 every one of you, I hope individually. I will answer any
16 questions, we will go through this. The Chamber of
17 Commerce supports this wholeheartedly and so does the
18 AFL-CIO.

19 We have a capacity here to put America in a leading
20 competitive posture for minimal American taxpayer dollar
21 exposure and investment, maximum private sector
22 production, maximum job creation. I hope Senator
23 Hutchison, Senator Graham, Senator Warner and I can
24 persuade you this is good for the country and it really
25 ought to be a bipartisan effort.

1 Thank you, Mr. Chairman.

2 The Chairman. Thank you very much, Senator.

3 Next, Senator Schumer.

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1 OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S.
2 SENATOR FROM NEW YORK

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4 Senator Schumer. Thank you, Mr. Chairman. I want
5 to thank you and your staff for the hard work that has
6 gone on in this mark-up. It has not been an easy task.
7 Provided no unforeseen changes are made during this mark-
8 up, I am going to wholeheartedly support this bill out of
9 committee.

10 It ensures an adequate funding stream for a strong
11 transportation reauthorization bill, takes into accounts
12 the needs we must meet across the Nation through the
13 continuation of both a healthy highway account and a
14 healthy transit account that funds our Nation's public
15 transportation.

16 I want to talk a little bit about public transit.
17 It not only benefits our Nation's economy, but provides
18 commuters with a safe and affordable option to travel
19 where they need to go. In New York City alone, the MTA
20 helps 14.6 million people commute by making 2.6 billion
21 trips over a 5,000 square mile region, so I am very
22 appreciative this mark acknowledges the important
23 function the transit account serves.

24 Also, I want to give you a special thanks, Mr.
25 Chairman, for inclusion of my amendment in the modified

1 mark to extend parity and transit benefits for 2012, and
2 all of our co-sponsors, Senator Menendez, Senator Cardin,
3 Senator Carper, and Senator Kerry, for their continued
4 commitment to this issue in support of the amendment.

5 As I explained during our extenders hearing last
6 week, it is a tax benefit for working families that
7 expired at the end of the year and needs to be extended
8 immediately. It is the only one that you cannot really
9 apply retroactively. It exists in permanent law for
10 employees that drive to work, and because of the
11 temporary status of the transit piece some commuters are
12 now getting about half the exact same tax relief, tax
13 cut.

14 The disparity is not fair. It makes no sense in
15 this economy to make it more expensive for commuters to
16 get to work. We should be doing everything we can to
17 make it easy for people to go to work. I want to again
18 thank you for your leadership in drafting this mark and
19 look forward to working with you to preserve the
20 important pieces, particularly the understanding that
21 this is a highway bill and a mass transit bill.

22 The Chairman. Thank you, Senator.

23 Next, Senator Kyl.

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1 OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM
2 ARIZONA

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4 Senator Kyl. Thank you, Mr. Chairman.

5 First, with regard to Senator Kerry's suggestion,
6 committing \$10 billion to a new infrastructure bank, I do
7 not think that is consistent with our need to begin
8 reducing our Federal budget deficit and wonder if our
9 constituents might be asking us when we will stop
10 dreaming up new ways to spend more of their money. To
11 the point that the unions and the Chamber support it, I
12 would be prepared to make a deal that since they support
13 the Keystone Pipeline, that we make it a two-for.

14 With regard to the Chairman's mark, last week we had
15 actually a very good meeting, I thought, a bipartisan
16 meeting where we were fully informed about items under
17 consideration to offset the cost of the highway bill.

18 Last Friday evening, our staff had the first glimpse
19 of the Chairman's mark and it was sold as trying to use
20 transportation or energy-related items to pay for the
21 highway bill, something that we had discussed earlier in
22 the week.

23 But it turned out there were several surprises.
24 There were many items that had never been discussed
25 before. Funding sources were removed from the general

1 fund and diverted to the Highway Trust Fund, but the
2 general fund was not made whole. We learned we were not
3 fully informed about just how retroactive the black
4 liquor provision would be; more on that later.

5 A summary of the modified Chairman's mark was
6 emailed to our staff about 1:42 a.m. this morning, and
7 there were more surprises when our staff showed up early
8 this morning to take a look at that. The pretense of
9 only using fuel or transportation related items as a
10 funding source is now totally gone.

11 There are extraneous new provisions that require
12 additional offsets. There are revivals of 2009 stimulus
13 provisions. There is also a provision that more properly
14 belongs in a discussion of the traditional tax extenders
15 package. There are even more new offsets that were never
16 discussed in our bipartisan meeting, at least one of
17 which is known to be very controversial.

18 In fact, about half of the total cost of the bill
19 would be offset by a brand-new tax change that has
20 nothing whatsoever to do with highways. It relates to
21 IRAs that are inherited by young children. Actually,
22 that is an offset that some of us are familiar with
23 because we have known that eventually we may have to deal
24 with changes to the estate tax.

25 If, for example, the estate tax law changes at the

1 end of this year, as of January 1 next year, both
2 Democrats and Republicans are going to want to change it.

3 That particular offset, I think the Chairman will
4 acknowledge, has always been perceived as something that
5 would definitely pertain to inheritance and could perhaps
6 be used for that situation.

7 I think my point is this. In the rush to try to put
8 this package together and not to consult on this side of
9 the aisle with many of the changes that have now been
10 made, I think we have lost the opportunity to have a
11 truly bipartisan package that the Finance Committee as a
12 whole could bring to the floor, add on to the highway
13 bill, and expect our colleagues to support. It is clear
14 that this bill needs a great deal of work, and at least
15 in its current form it is something that I cannot
16 support.

17 The Chairman. Thank you, Senator.

18 Senator Stabenow?

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1 OPENING STATEMENT OF HON. DEBBIE STABENOW, A U.S. SENATOR
2 FROM MICHIGAN

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4 Senator Stabenow. Well, thank you, Mr. Chairman,
5 for the mark-up. Obviously this is a very important
6 issue and I will want to speak on amendments later on
7 that have been offered. I know it is very challenging,
8 putting together this package, and I want to commend you
9 and your staff for the hard work on it.

10 In 1954, President Dwight D. Eisenhower spoke in
11 Detroit's Cadillac Square about the urgent need for an
12 interstate highway system, and he predicted correctly
13 that it was important for us to have a system that would
14 allow us to move forward and have a future for the United
15 States.

16 He said, "It will be a Nation of great prosperity,
17 but it will be more than that, it will be a Nation that
18 is going ahead", when he talked about America. That is
19 really what we are talking about today. We know that
20 having a focus and investment in transportation is key,
21 just as President Eisenhower understood that years ago.

22 The backbone of the economy is making things and
23 growing things, and we would not have an economy without
24 that. We cannot move those products from the factory,
25 from the farm, to markets, to consumers without a

1 transportation system that we are talking about today.
2 And we also know this is a bill creating jobs and it
3 needs to be a focus because of the need to create jobs
4 today.

5 We know we have a difficult budget situation. I am
6 glad this bill stretches dollars and consolidates
7 overlapping programs to make sure we are getting the most
8 out of every dollar. I think we have to do that with
9 everything that we do.

10 I am also very pleased that there has been progress
11 for States like Michigan that have been historically paid
12 more into the Highway Trust Fund than we have been able
13 to get back, and there is progress in that regard which I
14 am very pleased about.

15 And I am also happy to see the focus on freight
16 traffic, with a national freight plan to address
17 bottlenecks and make our shipping more efficient and
18 better for businesses.

19 I would urge that as we go forward on this that we
20 keep in mind with all our colleagues that this is about
21 jobs and that we come together in a fiscally responsible
22 way with offsets that will keep a focus on that as well.

23 So again, Mr. Chairman, I thank you for your work
24 and I am looking forward to moving this forward.

25 The Chairman. Thank you, Senator.

1 Senator Crapo?
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1 OPENING STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR FROM
2 IDAHO

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4 Senator Crapo. Thank you very much, Mr. Chairman.
5 I will be very brief.

6 I, too, support the notion that we must move forward
7 aggressively in developing and strengthening our
8 infrastructure in the United States. In terms of jobs,
9 there probably is not anything more effective that we
10 could be doing at the Federal Government level. That
11 just highlights the importance of this legislation. I am
12 hopeful that we will be able to put together a bipartisan
13 solution here and put the last piece of this legislation
14 forward so that we can move to the floor.

15 I do have concerns with some of the offsets. I
16 agree with the notion that our offsets should be related
17 as much as possible to roads and bridges and to our
18 highway system. I have strong concerns in particular
19 about the black liquor provisions.

20 We dealt with that issue a few years ago and now we
21 are going to be going back in and retroactively changing
22 the law in a way that is going to cause very significant
23 damage to a number of people and impact jobs around the
24 country, not the least of which is a major facility in my
25 State that will be very, very negatively impacted by this

1 retroactive change in the law.

2 I will be bringing an amendment to discuss later on
3 that will strike that offset. I am proposing as an
4 offset for that amendment something that I think is the
5 direction we ought to be going with regard to the funding
6 of this bill anyway, and that is as we look at the need
7 to raise revenue for legitimate activities of the Federal
8 Government, such as our highway bill and our
9 infrastructure, instead of always looking for a way to
10 raise taxes there is another way to generate revenue, and
11 that is to increase production.

12 The offset that I will provide or offer will be one
13 that will help to incentivize, as the President mentioned
14 in his speech, the increased production of oil and gas to
15 make us less dependent on foreign oil and keep the offset
16 focused on the generation of petroleum, natural gas, and
17 other forms of energy, and generate greater revenue
18 through greater production.

19 I think that would be not only an improvement to the
20 offsets in this bill, but it would also be an improvement
21 to our energy policy, as it may be. We do not really
22 have, in my opinion, a very solid energy policy, if we
23 had one at all for the country. One step in the
24 direction of developing a good energy policy would be to
25 help us take a step toward improving our competitiveness

1 globally and reducing our dependence globally on foreign
2 sources of energy.

3 So with that, Mr. Chairman, I will speak about that
4 more when I bring my amendment. Thank you.

5 The Chairman. Thank you, Senator.

6 Senator Cardin?

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1 OPENING STATEMENT OF HON. BENJAMIN CARDIN, A U.S. SENATOR
2 FROM MARYLAND

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4 Senator Cardin. Thank you, Mr. Chairman. Let me
5 first thank you for your leadership in bringing this bill
6 forward. I have the opportunity of not only serving on
7 the Senate Finance Committee, but also the Environment
8 and Public Works Committee.

9 You should note that this bill was reported out by
10 the Environment and Public Works Committee by unanimous
11 vote, which I think speaks well for the process. I also
12 understand the Banking Committee has reported out their
13 version dealing with transit by unanimous vote.

14 So I think we are off to a good start and I applaud
15 you for a responsible approach on dealing with the
16 revenue issues. It is important that we pass a
17 reauthorization bill. This bill will give a multi-year,
18 two-year predictability to those that depend upon the
19 Federal partnership in advancing our transportation
20 programs in this country.

21 In my own State of Maryland, this will preserve
22 10,000 jobs, so obviously it has the attention of the
23 people of Maryland, as it does throughout our country.
24 It will deal with improving our roads and bridges. Just
25 to give you one statistic in Maryland, and I think this

1 is typical of all the States of our country, we have 359
2 bridges that have been rated structurally deficient and
3 which 4.6 million motorists drive over,

4 Now, our State has taken action to try to correct
5 that, but it needs a robust Federal partnership in order
6 to make sure that keep our motorists safe and that we pay
7 attention to the maintenance of our bridges and our
8 roads.

9 The bill before us also provides equity in transit
10 funding. Senator Schumer has already talked about that.

11 In this region, transit is critically important. If you
12 commute to Washington, you know from what I am talking
13 and the importance of the Washington Metropolitan Transit
14 System, as well as the other transit programs we have in
15 this region.

16 I want to join Senator Schumer in thanking the
17 Chairman for including in his mark the transit benefit
18 provisions. That is a matter of fairness, but it is also
19 a matter of helping preserve our roads and bridges
20 because it takes less motorists off the roads, those who
21 use the transit for commuting purposes. They should be
22 treated with parity to those who operate their vehicles.

23 I want to thank Senator Schumer for his leadership on
24 that issue, and I am very pleased that that was included
25 in the legislation.

1 I also want to thank Senator Rockefeller for his
2 leadership on the Appalachia highway program. I know
3 that he plans to talk about that. I share Senator
4 Rockefeller's concern as to how this legislation has
5 combined certain programs and therefore we want to make
6 sure that there is a priority to complete the Appalachia
7 highway program.

8 That north-south highway is critically important to
9 the economy of West Virginia, western Maryland, and
10 Pennsylvania and we want to make sure that the
11 commitments that were given, in fact, are completed. I
12 look forward to working with Senator Rockefeller under
13 his leadership so that we can advance that issue for the
14 commitment that has been made to the people of that tri-
15 State region.

16 Lastly, let me say, Mr. Chairman, I will be offering
17 an amendment that deals with the leaking underground
18 storage tanks. It looks like we do not quite have the
19 scoring on that done so I will look forward to talking
20 with the Chairman as to how we can, I hope, improve that
21 provision that was included in the Chairman's mark as we
22 move forward.

23 The bottom line is, I hope that we can continue the
24 momentum that we have seen in two other of our committees
25 so that we can move forward with a reauthorization bill

1 that enjoys strong bipartisan support.

2 The Chairman. Thank you, Senator.

3 Next, the distinguished Senator from Kansas, Senator
4 Roberts.

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1 OPENING STATEMENT OF HON. PAT ROBERTS, A U.S. SENATOR
2 FROM KANSAS

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4 Senator Roberts. I thank the distinguished
5 Chairman and Senator Hatch.

6 We all agree that improving the Nation's
7 infrastructure is vitally important to creating and
8 sustaining economic growth and to promote commerce. We
9 all know this requires dedicated funding from multiple
10 sources, obviously the Federal Government included.

11 Thirty-one percent of my State's transportation
12 funds comes from the Federal Government. That is \$468
13 million--not billion, million. In the current fiscal
14 year, the Kansas Department of Transportation estimates
15 that these funds, however, will be leveraged at over \$3
16 billion in economic growth within 10 years.

17 The Kansas DOT is in the middle of an \$8 billion,
18 10-year plan to improve the highway system in the State,
19 which will in turn certainly promote growth, jobs,
20 everything that we say that we would like to see happen
21 around here.

22 While Federal funds are just a portion of the money
23 we will spend because of their structure and their steady
24 funding stream, they are a very important item to the
25 construction components of the 10-year plan. That is why

1 I had such high expectations for the legislation before
2 us here today.

3 Mr. Chairman, I really appreciate your effort to
4 return to regular order in the committee. It has been
5 far too long since we have used the regular committee
6 process for consideration of critically important
7 legislation, and the willingness of the Chairman to work
8 with the Minority on legislation.

9 But as Senator Kyl has pointed out, it appears that
10 at some point this effort has broken down.
11 Unfortunately, I think that endangers what should be a
12 solidly bipartisan proposal from this committee. Just
13 this morning we learned what was talked about on Friday.

14 We now have a mark before us that includes piecemeal
15 provisions more appropriate for other bills, including
16 extenders unrelated to surface transportation and
17 significant changes to retirement policy. This is not
18 regular order. This is not the best process.

19 We have also other provisions that, if I had a
20 bookshelf for bad policy, I would certainly put them in
21 there. As a matter of sound tax policy, changes to tax
22 law should only be made prospectively down the trail,
23 down the road so people know what is going on. Taxpayers
24 should be able to rely with confidence on the law as it
25 exists when contracts are signed and transactions are

1 made.

2 Individuals and businesses must be able to depend on
3 the certainty of the law in order to make informed
4 business decisions. Retroactive tax policy such as has
5 been suggested with this bill through several amendments
6 that we have just learned about may force businesses to
7 delay or avoid sound business decisions for fear that
8 later changes in the law will render such decisions
9 illegal or financially burdensome. The retroactive
10 application of a tax change interferes with business
11 decisions on resource allocation and should be avoided.

12 So, Mr. Chairman, I understand there may be
13 amendments today that will address my concerns. I hope
14 they will be considered and passed by the committee. I
15 would like to associate myself with the remarks made by
16 the distinguished Senator from Arizona.

17 The Chairman. Senator Enzi, you are next.

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1 OPENING STATEMENT OF HON. MIKE ENZI, A U.S. SENATOR FROM
2 WYOMING

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4 Senator Enzi. Thank you, Mr. Chairman. I, too, am
5 concerned about the long-term viability of the Highway
6 Trust Fund. The highway program is incredibly important
7 to all our States. The proposal we look at today gets us
8 through the next two years of spending, albeit with 10
9 years of revenue, but does nothing to address the future
10 of this program.

11 We are looking at some real difficult decisions
12 about our overall budget, but especially about the future
13 of the Highway Trust Fund. If members of this committee
14 and the full Senate want to keep the highway program
15 viable through a trust fund instead of subjected to
16 competing for general funds, we either need to cut
17 spending or generate more revenue.

18 We can certainly give States more flexibility in how
19 they prioritize the Federal funds they receive, but we
20 should not, and cannot, ignore that with this bill we are
21 just buying time. Again, we are going to spend in two
22 years what it will take us 10 years to accumulate.

23 I know there are a lot of sensitivities in talking
24 about the rate of the motor fuel tax. There is no doubt
25 that individuals and businesses are still stressed in

1 this economy and they are struggling to make ends meet.
2 People in rural States like Wyoming, Montana, and Utah
3 have few options to driving long distances for many of
4 their needs. We cannot continue to kick this
5 conversation down the road for another two years.

6 I also am concerned about the use of retirement
7 savings as the vast majority of offsets to this tax bill.

8 This is not the first time retirement savings have been
9 used for savings outside of the retirement savings area.

10 Just two years ago, the savings from the Pension Relief
11 Act were used to offset the spending for the doctor
12 payment fixes in Medicare.

13 In addition, there are a couple of amendments where
14 members use retirement savings to spend for highway and
15 other items. We need to be very careful of using these
16 tax savings for non-retirement savings needs because when
17 you need to improve the retirement system then we will
18 not have the tax savings to make those changes.

19 I think we should have a first rule, that we will
20 not violate trust funds unless the money came from the
21 gas user fees. That would be the LUST money, which came
22 from the gas tax and went into that fund, and it is an
23 over-funded fund. It is over-funded right now, not over
24 the next 10 years. So there are some options out there.

25 They are all difficult options, but I know we need to

1 make the right decisions.

2 Senator Hatch. Senator Cornyn?

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1 OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR
2 FROM TEXAS
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4 Senator Cornyn. Mr. Chairman, thank you for
5 holding today's mark-up. I know this is a challenging
6 issue and I, too, appreciate the return of the regular
7 order that will allow the committee to work its will.

8 I have concerns with some of the provisions included
9 in the Chairman's mark, but I would like to address how I
10 believe we should approach infrastructure spending in
11 general. Congress is due to pass a new Surface
12 Transportation Reauthorization Act in 2009, but like a
13 lot of other issues that should be priorities our
14 transportation needs have simply taken a back seat.

15 While this bill we expect to consider on the Senate
16 floor does contain positive reforms, unfortunately there
17 are still far too many inefficiencies and too much red
18 tape over which projects are funded and when.
19 Fundamentally, this bill fails to provide the certainty
20 the States need to undertake major infrastructure
21 projects and does not address our long-term funding
22 needs. A two-year fix, yes, but I think that is
23 emblematic of the challenges caused by Congress's
24 policymaking in the last several years.

25 In many ways the challenges we face here mirror

1 those faced by the broader Federal Government. We know
2 that patchwork, temporary fixes are a bad way to do
3 business, but that is the way we have done business for
4 too long.

5 Finally, I am very concerned that \$6.8 billion of
6 the funding for this bill will come out of general
7 revenue. I do not have to recite the figures. We all
8 know them by heart: \$15 trillion-plus in debt; 40 cents
9 out of every dollar spent is borrowed money; a 40 percent
10 increase in our Federal debt in the last three years.

11 We know that government spending makes up almost a
12 quarter of the economy, while the revenue is roughly 15
13 percent of GDP, hence huge deficits which add up to make
14 big debt. We have to come to the realization that we
15 have got to stop spending money we do not have.

16 I look forward to a lively debate about funding our
17 transportation system and what Federal spending we should
18 prioritize.

19 I will yield.

20 Senator Hatch. Senator Coburn?

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1 OPENING STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM
2 OKLAHOMA

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4 Senator Coburn. Well, I am sorry the Chairman is
5 not in here. In his opening statement he said -- oh,
6 there he is. He is hiding. He is hiding.

7 The Chairman. No, no. I am consulting with our
8 colleagues.

9 Senator Coburn. All right. Well, he said we are
10 going to consider the best way to pay for this.

11 The Chairman. Yes.

12 Senator Coburn. The thing that has me concerned
13 about what we are doing, is we are not matching revenues
14 with expenses. We are not doing what the average family
15 does. We are not doing what the average State is doing
16 now. We are going to pay for this bill, a large portion
17 of it, over 10 years for two years' worth of highway
18 funding.

19 Everybody here wants to do highway funding. The
20 fact is, is what are we going to do in 2013? Has anybody
21 thought about that? Because this problem is going to
22 come back. So we are not fixing the real problem in
23 terms of funding highways at the level at which we need
24 to do it.

25 Senator Kerry was eloquent in terms of outlining

1 what the infrastructure needs are in our country, but I
2 would remind my colleagues that we spent \$840 billion on
3 the stimulus bill, of which less than 5 percent related
4 to infrastructure across highways and mass transit. Less
5 than 5 percent.

6 Had we had more prudent discussion and carry out of
7 that bill, we would have much less of a problem in terms
8 of infrastructure today and we would also have much
9 higher employment levels because of the actual economic
10 multiplier effect of infrastructure, which everybody on
11 this committee agrees with.

12 So, Mr. Chairman, I support us going for a highway
13 bill, but I think we have to match revenues that are
14 going to be expended with reductions and costs in the
15 same period of time. I think when we take 10 years to
16 pay for something we are going to spend the money on over
17 2 years, the American public say, "There you go again."
18 I think we can do better. I think there is better than
19 the best we have outlined in this bill.

20 I will be supportive of anything that matches that
21 requirement, paying over two years for spending over two
22 years, but I cannot support any bill that is going to
23 collect money eight years after the bill is over to pay
24 for the two years that we are going to improve and
25 enhance infrastructure in this country.

1 That is how we got \$15 trillion in debt, and
2 Republicans are just as responsible for that as anybody
3 else, as are Democrats, and it is time that we quit
4 playing that game. So I will work with you in any way
5 that I can, but the revenues and expenses have to match
6 in the period which we are talking about.

7 Thank you.

8 The Chairman. Well, Senator, you make a very good
9 point. This is not a good way to do business, I grant
10 you. You make a lot of very good points. We are here in
11 part because the revenues from the fuel tax has not kept
12 pace. It has not kept pace because the fuel tax was not
13 indexed. It is something that the Senator from Wyoming
14 points out constantly. I do not know if this body is
15 ready to address that question at this time.

16 It is my hope that when we do the next highway bill,
17 probably 2013, that we will do a five-year bill and maybe
18 tie into some of the points that Senator Kerry was
19 mentioning. We could have an infrastructure bill that
20 really puts this country back on track again. This bill
21 is not that bill, as you have implied.

22 I very much agree, I will work with you, and all
23 Senators, in order to get a more solid, sound fiscal
24 platform that pays for the infrastructure needs of our
25 country and not be robbing Peter to pay Paul, as we too

1 often do around here. You make very good points. I
2 agree with the thrust of your remarks and I don't think
3 we're at the point yet where we can do what you and I--in
4 fact, most of us--want to do.

5 Senator Coburn. Mr. Chairman, if you would yield,
6 I would just tell you, most of us would like to do it.
7 The American people are expecting us to do it. The game
8 is up. We cannot keep playing this game of taking money
9 from the future, which we have no assurance it is going
10 to be there, to say we are paying for something today
11 when they all live under the guidance that you cannot do
12 that.

13 So we have these extra economic rules that we play
14 with that matches the money up dollar for dollar with no
15 assurance that the money that we say is going to be there
16 is actually ever going to come to the Treasury to do
17 that.

18 I think what the American people would like to see
19 us all on both sides of the aisle do is to start with
20 some principles of matching expenses with revenues. If
21 it means for Tom Coburn to vote to index the gas tax as a
22 percentage, I am willing to do that today because in the
23 long term that is what is best for our country. Now,
24 that is not politically popular, but if you are going to
25 base your decisions on principles of good accounting and

1 good economy and a future for our country, those are the
2 kind of things we are going to have to do.

3 I thank you, Chairman for indulging me.

4 The Chairman. Thank you, Senator, very much.

5 Senator Burr?

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1 OPENING STATEMENT OF HON. RICHARD BURR, A U.S. SENATOR
2 FROM NORTH CAROLINA

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4 Senator Burr. Mr. Chairman, thank you. Since this
5 is my first Finance mark-up I cannot praise you for the
6 change in the way we operate, but I will take my
7 colleagues' word that this is a change from where we have
8 been.

9 I sort of get the impression, when I walked in the
10 door after reading what has transpired over the last 36
11 hours, that the fix is in, that this is predestinated as
12 to how it is going to be. I share a lot of the comments
13 that my colleagues have made.

14 Now, last week I was in this committee room, an at
15 the witness table we had experts that talked about what
16 we needed to do on tax reform and what we needed to do to
17 turn the economy around and to create jobs in this
18 country. The one thing that all three witnesses shared
19 was the predictability of tax obligations, that as we did
20 before we had to clarify what the rules were going to be
21 and what the rates were going to be.

22 Now all of a sudden, just a week later, I am in the
23 same room and we are funding the highway transportation
24 bill with non-transportation issues and we are talking
25 about things like claw-back, tax claw-back, where we are

1 going back into businesses in some cases that have spent
2 or committed funds to create jobs in this country, and we
3 are sitting here talking about taking it away from them.

4 We told them what the rules were going to be. We said,
5 here is what we are going to give you.

6 Now we are saying in midstream, well, we did not
7 mean it. We are going to take it back because we found
8 something we would like to fund with it. Listen, this is
9 not a new revelation that our bridges and roads are in
10 disrepair. We have all known it. Maybe it is tough to
11 raise a tax on gas or a tax on something that is relevant
12 to the issue.

13 Let us look at how we open up exploration. Let us
14 put a higher fee on those leases. Let us begin to raise
15 some revenue to address the problem. Let us not just
16 turn to something that is easy, where we do not see the
17 human face, and say well, this is because of job
18 creation. When we claw back, we cost the economy jobs.

19 Now, the one point I would like for all my
20 colleagues to hear is what has been said by two
21 colleagues, that we are funding a two-year bill with 10
22 years' worth of revenues. I would just like to ask you,
23 what happens if we do not show the backbone to set up a
24 funding mechanism tomorrow for two years from now.

25 Are we going to do another two-year bill where the

1 funding that we use for it is going to take funding in
2 year 10 through 20. And heaven forbid we get a 5- or 6-
3 year bill. Does that mean that the funding mechanism that
4 we used is going to pull it from 20 to 30 years? Because
5 that is the precedent that we are setting right now, is
6 that it takes 10 years to fund 2 years' worth of highway
7 transportation bill.

8 Therefore, if we multiply that times 3 it is going
9 to take us 30 years. We are now into our grandchildren's
10 pocket. Not just our kids' pockets, but our
11 grandchildren's pockets. I think that that is a little
12 scary. It is a little scary for me and should be a
13 little scary for every one of us.

14 I would suggest that what America sees in what we
15 are doing is very scary to them. I would urge all of us,
16 as we look at the amendments, the first place you start
17 is to make sure the amendments to this bill pertain to
18 transportation.

19 The majority of the amendments that I have looked
20 through in this have nothing to do with this piece of
21 legislation. They are tax policy and a lot of other
22 things, but they do not have anything to do with the
23 transportation bill.

24 It starts by not offering them, but it also
25 continues by, when this mark-up is over and this bill is

1 off the floor, let us have a real discussion as to how we
2 are going to pay for this in the future because I think
3 the fix is in. We are going to pass a transportation
4 bill, we are going to pay for it with funny money, and
5 the people that will suffer from that are not us, because
6 we will not be here when the bill comes due.

7 I thank the Chair.

8 The Chairman. Thank you, Senator.

9 I think a more fair way to describe this is an
10 effort to build a consensus, that is, talking to Senators
11 on both sides of the aisle and trying to figure out where
12 the center of gravity is. We work very hard to try to
13 find that center of gravity. That can be characterized
14 in lots of different ways, but that is the process here
15 to try to get to.

16 Senator Carper?

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1 OPENING STATEMENT OF HON. THOMAS CARPER, A U.S. SENATOR
2 FROM DELAWARE

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4 Senator Carper. Some of you have heard me quote a
5 friend of mine, when you ask him, "How are you doing", he
6 says, "Compared to what?" When we look at this -- I am
7 going to call it -- in Delaware we have a term called "a
8 dog's breakfast". A dog's breakfast.

9 I do not know if you have a term like that in your
10 States, but a dog's breakfast refers to a collection of,
11 like, dogs and cats, that may not be particularly lovely
12 to admire or look at or to live with, but at the end of
13 the day they sort of get you through the day. What we
14 have here is a collection of revenue proposals, over 10
15 years, used to fund spending for 2 years.

16 God knows I am not crazy about it, and I know my
17 colleagues are not either. The thing that would be worse
18 than that is, frankly, not funding our transportation
19 programs for the next two years.

20 There is a guy named--Jay Rockefeller quoted this
21 guy yesterday--John Chambers, CEO of Cisco, a West
22 Virginian. John Chambers likes to say that the jobs in
23 the 21st century are going to go to the places that do
24 two things well: world-class workforce, world-class
25 infrastructure.

1 Kudos to our colleague from West Virginia and
2 Ranking Republican from the Commerce Committee. We
3 actually voted yesterday on a conference report to move
4 forward on bringing part of our infrastructure into the
5 21st century: the air traffic control, airports, that
6 kind of thing. I commend you for that.

7 We are riding way behind with respect to our ground
8 transportation system. I am reminded a little bit -- I
9 like to use this example, and maybe it will work here
10 today, maybe it will not. Let us say this glass right
11 here is the Federal Transportation Trust Fund. All
12 right. We have a healthy thirst for road, highway and
13 bridge improvement so we drain it dry.

14 Now what do we do? Well, we take money from the
15 general fund and we pour it in here, we drain it dry. So
16 now this is empty, this is empty, and we turn over and we
17 look to China. Excuse me, China. Could you help us
18 replenish this? Or we look at revenues that we draw from
19 for 10 years and we pour that into here to spend. This
20 is crazy.

21 Senator Hatch. I want to see you drink all that
22 now.

23 [Laughter.]

24 Senator Carper. You get the drift. You get the
25 drift. Last time we did a long-term transportation bill.

1 We included in there language that says let us put
2 together a Blue Ribbon Commission. Their job is to come
3 back to us and say there are all kinds of things that we
4 can do to raise revenues, to match revenues and
5 expenditures over a secure period of time.

6 They did that, they gave us their ideas, and almost
7 everybody said, oh, cannot go there, dead on arrival,
8 that sort of thing. But actually I am encouraged to hear
9 a couple of my colleagues on the Republican side saying
10 the idea that maybe indexing the gas tax might make some
11 sense.

12 So might be the idea of using vehicle miles
13 traveled, so might be the idea of tolling, so might be
14 the idea of doing some bonding. There are all kinds of
15 ideas out there. Are we prepared to stop this stop-gap
16 measure? For God's sake, let us go back to some of those
17 ideas, update them with better ideas, and the next time
18 when we do this a year or two from now we use, what we
19 say in my State, some common sense, some good fiscal
20 sense, some financial sense, and some courage.

21 And you know what? Rather than getting bounced out
22 of here by our electorate, our voters, you know what they
23 will do? I think they will actually salute us and say
24 they are doing what we elected them to do. That might be
25 the triumph of man's hope over experience. But I hope--I

1 hope--that that is what is going to happen.

2 Mr. Chairman, thank you for getting us to this
3 point, and everybody that has worked hard to put this
4 package together. We all know that we can do better, and
5 the next time we have got to.

6 Thank you.

7 The Chairman. Thank you, Senator, very much.

8 Senator Thune?

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1 OPENING STATEMENT OF HON. JOHN THUNE, A U.S. SENATOR FROM
2 SOUTH DAKOTA

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4 Senator Thune. Mr. Chairman, I would like to offer
5 my glass of water to the Senator from Delaware, since he
6 kind of drained all those over there.

7 [Laughter.]

8 Senator Thune. This is a short-term fix and I
9 think everybody has talked about that and the importance
10 of having a longer term solution. I do not have to tell
11 anybody how important highway funding is in a State like
12 South Dakota. It is like the Chairman's State. We have
13 lots of geography and lots of ground to cover to get
14 people from place to place.

15 Interestingly enough, in South Dakota, 65 percent of
16 the truck traffic is interstate commerce. So people
17 come, they travel, it supports the national
18 infrastructure that keeps our economy strong and keeps us
19 competitive in the world marketplace.

20 We have got agriculture that moves that way, natural
21 resources getting from their source to the markets, and
22 we have got a big backlog in South Dakota, like every
23 other State in the country does, and that has already
24 been mentioned.

25 So we need a long-term funding source to pay for

1 these infrastructure improvements since the fuel taxes
2 have not changed since 1993, and I think that has also
3 been alluded to.

4 If you look at a State like South Dakota, we have 19
5 people per lane mile of Federal aid highway. The
6 national average is approximately 129 people per lane
7 mile. Our per capita contribution to the highway account
8 is approximately \$160 a person, compared to the national
9 average of about \$114 a person.

10 We have always recognized that it is important that
11 we have a national transportation, a national highway
12 system that serves all our States across the country, and
13 I think that even those who represent larger, more
14 populated States have always recognized that and we have
15 worked together on finding solutions.

16 Unfortunately, a two-year extension is not the
17 preferred way of solving this problem. We just flat have
18 to come up with a better way, and I hope we can do that.

19 But we do have to do this now and do it in the most
20 responsible way. There has been some reference to some
21 of the offsets that have been proposed.

22 I share the concern about spending in 2 years and
23 taking in revenue in 10, and all the borrowing that that
24 necessitates. I share the concern that many of these
25 offsets are no longer related to the trust fund and there

1 are considerable general fund transfers there, and that
2 also the scope has sort of widened to include now some
3 tax extender issues that were not initially discussed
4 when we were talking about offsets for this bill.

5 So I am going to offer an amendment to strike some
6 of those extraneous provisions. I knew this would be a
7 magnet for other issues, for tax extender issues. There
8 are lots of tax extender issues that individual Senators
9 are concerned about, but there has got to be a different
10 place to deal with that.

11 This needs to be a very narrowly crafted solution
12 that addresses specifically the issue of the shortfall
13 and the insolvency in the trust fund, and it should not
14 go beyond that. So I hope that Senators will support
15 that amendment and I hope that we can come up with
16 something here that we could take to the floor that is a
17 responsible solution, even though it is short term and we
18 need a long-term solution to our transportation needs in
19 this country.

20 So I will be interested in listening to the
21 discussion, and as people offer amendments, seeing where
22 this bill ends up.

23 Thank you, Mr. Chairman.

24 The Chairman. Thank you, Senator.

25 Senator Menendez?

1 OPENING STATEMENT OF HON. ROBERT MENENDEZ, A U.S. SENATOR
2 FROM NEW JERSEY

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4 Senator Menendez. Thank you, Mr. Chairman. Let me
5 thank you for the work that you have done to bring us to
6 this point. I think it is incredibly important because
7 this mark-up is critical in that it allows us to consider
8 some very sensible investment in infrastructure and help
9 create or retain nearly 2 million jobs.

10 I can tell you, if people are reflective of many
11 people in my home State of New Jersey, Americans are
12 going to be looking to how this committee acts and how we
13 act in the days ahead because they are looking for work.

14 This is a real opportunity for that to happen.

15 As the chair of the Banking Subcommittee that has
16 jurisdiction over transit, I am incredibly proud of the
17 work the committee did to have a unanimous bipartisan
18 vote in the Banking Committee that sends the transit
19 provisions to the full Senate. That took a lot of hard
20 work, but it achieved that type of support.

21 So I am particularly anxious that we shore up the
22 mass transit account of the trust fund. With a daily
23 ridership approaching one million trips a day, New Jersey
24 relies on transit. Without a full, stable funding
25 source, the economy vitality of my State is under threat.

1 For millions of Americans, transit is the only way to
2 get to their job or visit a physician, and for thousands
3 of communities, public transportation is simply essential
4 to ease traffic and facilitate economic growth.

5 So I want to applaud the Chairman for providing a
6 flexible fund that can shore up either highway or transit
7 funding, depending on which account needs it. While it
8 is not fully what we would want, I think it is a very
9 sensible approach.

10 I hope that we will not see attempts to take from
11 this flexible fund to determine one or the other because
12 that is a serious concern that I would have for ultimate
13 passage of this bill.

14 I also want to thank the Chairman for working with
15 Senator Schumer, myself, and other members of the
16 committee to extend transit commuter benefits. Thousands
17 of commuters have been having to pay more to get to work,
18 and I know passage of this provision would be a great
19 relief to them and to employers trying to attract a
20 skilled workforce.

21 And finally, I would like to talk for a minute about
22 an amendment I intend to offer to create private sector
23 jobs rebuilding our Nation's crumbling order
24 infrastructure. Articles appear in our hometown papers
25 all the time about water main breaks flooding businesses,

1 shutting down highways, sewers overflowing, disrupting
2 communities. Believe it or not, in many of our
3 communities water infrastructure can be over 100 years
4 old. Needless to say, much of the Nation's drinking
5 water comes through infrastructure in dire need of work.

6 This is an important infrastructure bill and I
7 believe that this amendment fits well in the goals that
8 the Chairman's mark seeks to accomplish. It is a private
9 sector solution, fully paid for by a proposal that stands
10 on its own merits of smart policy and has bipartisan and
11 bicameral support.

12 So I want to thank the Chairman and staff who are
13 working with me on this and for all his consistent
14 support on this issue, and I look forward to the mark-up
15 and ultimate passage.

16 The Chairman. Thank you, Senator.

17 Next, is Senator Wyden.

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1 OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM
2 OREGON

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4 Senator Wyden. Thank you, Mr. Chairman, and thank
5 you very much for all of your help and assistance,
6 particularly with this concept that I worked on for
7 almost a decade, the question of bonding.

8 And we have talked around this issue repeatedly this
9 afternoon, but I think it is clear that the model that
10 the country has used in transportation for years and
11 years and years, the gas tax is one that has profound
12 limits. I have been very appreciative of the comments I
13 heard Senator Enzi, Senator Coburn, and others, talking
14 about how they are willing to build on it.

15 I think at the same time I think all of us
16 understand that there are not going to be any rallies
17 outside our office, with this kind of economy, saying
18 please raise the gas tax. So what we have got to do, is
19 we have got to find politically acceptable ways to
20 generate additional revenue for the infrastructure that
21 we all know needs to go forward.

22 I thought we had a pretty good approach in the
23 Recovery Act, with Build American bonds. It was a
24 bipartisan approach. One hundred and eighty-one billion
25 worth of Build America bonds were sold, 30 times more

1 than anyone projected.

2 A number of my colleagues had concerns about that so
3 I went back to the drawing board, and particularly with
4 Senator Hoeven, what we have done is come up with a new
5 approach, tax credit bonds that have been backed by the
6 laborers, an important union group, and also by Doug
7 Holtz-Eakin. I would just ask, Mr. Chairman, if Doug
8 Holtz-Eakin's statement on behalf of TRIPs bonds could be
9 made a part of the record.

10 The Chairman. I see no problem with that. Without
11 objection.

12 [The prepared statement of Mr. Holtz-Eakin appears
13 in the appendix.]

14 Senator Wyden. And the only other point that I
15 would want to make is that this approach that now has
16 support of labor folks and people like Doug Holtz-Eakin,
17 using tax credit bonds where the tax credit is based on
18 the market rather than government and uses the States, so
19 it is not run from Washington, DC, I hope can be part of
20 the effort as we look ahead.

21 I think Chairman Baucus is spot on that we are going
22 to have to find a way to deal with this issue in terms of
23 the big challenge. I think what we have seen from the
24 last five years is well-targeted bonds, particularly ones
25 that use tax credits that have been able to unite

1 conservatives and progressives, can be part of that
2 solution.

3 Mr. Chairman, I thank you as well for making the
4 TRIPs bonds a part of your mark this afternoon.

5 The Chairman. Thank you, Senator.

6 Senator Rockefeller?

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1 OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER, IV, A U.S.
2 SENATOR FROM WEST VIRGINIA

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4 Senator Rockefeller. Thank you, Mr. Chairman.
5 Thank you for bringing us to this place. I just have a
6 couple of comments.

7 The Commerce Committee is responsible for safety.
8 What needs to be made really clear is that safety is now
9 an integral part of transportation. Trucks are moving.
10 They are so big, they are moving so fast. Highways are
11 not being reinforced, kept up to strength. So that when
12 you are talking transportation, you are also talking
13 safety.

14 For example, if you are going along at a good clip
15 and you use your texting process for one interaction, on
16 average that will take about 4.6 seconds, which is about
17 the length of two football fields. So that if you think
18 of driving in hills that I come from, you are almost
19 certain to be in an accident. So it is important to
20 think about things that way. Whether it is truck safety,
21 whether it is train safety, safety is a part of
22 transportation and that is what we add to it, hazardous
23 materials, things like that.

24 Distracted driving is a huge problem. It is not one
25 that one of the parties here is fond of, but it is a huge

1 problem. It kills thousands and thousands of people, and
2 maims so many more. Safe teen driving is a huge problem.
3 So I want to say that. I am very pleased that we are
4 getting bills out of this committee; whether we do out of
5 the Commerce Committee is not yet decided, whether we
6 will or not. If we do not, it would be a tragedy, but we
7 are not there yet.

8 I also join with those who complain about unrelated
9 funding for our transportation systems and highways,
10 though I also am one who looks back to a pretty solid
11 base of something called the user fee. It makes sense.
12 It is not politically viable, but it does not mean it
13 does not make sense.

14 We are going to come out of this thing and, in my
15 judgment--I have questions for Mr. Lynch on this but I do
16 not think I am going to get a chance to ask them--that as
17 we move forward, if we are going to find a sustainable
18 funding mechanism for highways, we are going to have to
19 get back to that system and that will mean educating the
20 American people very strongly, it will mean a better
21 economy than we have today, but there has never been
22 anything wrong with that.

23 There is something quite wrong where you have, in
24 West Virginia, one particular road I am thinking of,
25 which is completely done for about three miles here and

1 at the other end it is completely done for about three
2 miles there, and everything in between is just pasture.
3 Because the voters turn down the concept of bonding or of
4 user fee, they will take responsibility for sharing in
5 the paying of what they use, in fact, to get to work or
6 to the doctor every day. So I just raise that as an
7 issue.

8 Finally, the Chairman whispered to me something
9 which actually did not make me glow, but which did not
10 match with what Senator Menendez said about the
11 Appalachian highway system. Those of you--I see a number
12 over there who understand Appalachia very well. But
13 Appalachia, all the way from Georgia all the way up,
14 really to Maine, New Hampshire, is an ancient -- the
15 second-oldest mountain system in the world and it is
16 impenetrable.

17 So the Appalachian highway system was created back
18 in the 1960s in order to say the interstate highways are
19 really going to work but they are not going to get us
20 through mountains. All you are talking about in
21 Appalachia is mountains. In West Virginia, only 4
22 percent of our land is flat, so you kind of get where I
23 am coming from.

24 There is an amendment which I will not call for a
25 vote on but I feel very strongly about, and that is to do

1 what the EPW did not do, and that is to keep separate the
2 Appalachian highway development system and not combine it
3 with a whole lot of other systems, which then guarantees
4 that the majority of governors will spend no money at all
5 on the Appalachian highway system, which yet remains to
6 be built. But these are concepts that we can work on as
7 we go forward, and I thank the Chairman.

8 The Chairman. Thank you, Senator. I now call on
9 Senator Grassley.

10 Senator Grassley. Mr. Chairman, I am going to have
11 to absent myself for about a half hour on a problem
12 dealing just with my State, so I would like to, instead
13 of making an opening statement, just speak about an
14 amendment that might come up or might not come up.

15 I would thank Senator Cantwell for filing this
16 amendment on the biodiesel tax incentive and for her
17 leading on this important issue. This amendment would
18 extend the incentive for biomass-based diesel through
19 2014. It is important to remember that the biodiesel
20 incentive was one of many tax incentives that expired at
21 the end of 2011.

22 In 2010, the biodiesel tax incentive lapsed and
23 there were probably about 23,000 jobs lost. Production
24 fell to the lowest level since 2006, when Congress
25 extended the incentives. Last year, the industry bounced

1 back and achieved record growth. The domestic biodiesel
2 industry supports 31,000 jobs last year. It displaced
3 1.1 billion gallons of imported diesel fuel.

4 Biodiesel is the only advanced biofuel that is
5 making a significant contribution to our fuel supply. I
6 recognize that this bill may not be the most appropriate
7 place to extend the biodiesel tax incentive. In fact, it
8 is probably not a very appropriate place to do anything
9 with tax extenders. But you, Mr. Chairman, decided to
10 include some.

11 It is unfortunate there are just a few extenders in
12 this bill, but not others that actually impact
13 transportation, like obviously the biodiesel tax fuel or
14 biodiesel tax credit is very much related to
15 transportation and not doing it has serious consequences.

16 The tax incentive should be extended so that jobs can be
17 maintained. Extending the tax incentive is good for our
18 environment, for our national security, and obviously
19 good for the economy when you are worried about jobs, it
20 should be extended as soon as possible.

21 I yield back my time.

22 The Chairman. Thank you, Senator.

23 Next, Senator Bingaman.

24 Senator Bingaman. Mr. Chairman, in the interest of
25 time I will just forego an opening statement and go right

1 to amendments whenever you are ready.

2 The Chairman. I always thought you were a wise
3 man.

4 Next, Senator Nelson.

5 Senator Nelson. Same thing, Mr. Chairman.

6 The Chairman. All right.

7 Senator Nelson. Aren't you going to call me a wise
8 man?

9 The Chairman. You are just as wise as the Senator
10 from New Mexico. All right.

11 I would now like to move to the modified mark. The
12 mark is before the committee, the modification is, and
13 the mark is so modified.

14 The next order of business is to walk through the
15 modification and answer any questions that Senators might
16 have. Tom Barthold, if you could just briefly describe
17 the main features of the modification. When Mr. Barthold
18 is finished, then I will open it up for questions that
19 Senators might have on the modification.

20 Mr. Barthold?

21 Mr. Barthold. Thank you, Mr. Chairman, Senator
22 Hatch.

23 I will try to be brief by just highlighting a few of
24 the items in the Chairman's modification. The documents
25 prepared by our staff, JCX-11, 12, and 14, you have

1 before you with X-11 being a descriptive document and the
2 other two documents being tables, one tracking the
3 revenues effects and the other showing the flows into the
4 various trust funds.

5 The Chairman's modification to his mark makes two
6 changes to the mark as released last week. One relates
7 to carryovers of unprocessed and excluded fuels. This is
8 the black liquor provision, which was part of the
9 introductory discussion, and the other modification
10 extends the time period from which certain tariff
11 receipts are transferred from the general fund to the
12 highway trust fund.

13 I call your attention to some of the new provisions
14 that are in the Chairman's modification. In particular
15 the first one that we note provides that in a corporate
16 spin-off, if the subsidiary corporation has cash and debt
17 in excess of the adjusted basis of its assets, that the
18 transfer will be considered a taxable gain transaction to
19 the extent of the excess of the cash and debt above the
20 adjusted basis.

21 To skip ahead to another provision in the mark, the
22 provision does provide a short-term extension of the
23 expanded definition of bank-qualified tax-exempt debt.
24 This provides that instead of there being a \$10 million
25 limit for defining a bank-qualified debt, it is a \$30

1 million limitation and provides that pooled issuances.

2 In the case of a larger issuance, it is a pool related to
3 many small, individual issuers, that you look through the
4 pool to the individual issuer. That applies to bonds
5 issued after the date of enactment through the end of
6 this year.

7 Likewise, there is another tax-exempt bond provision
8 that provides for exemption from the Alternative Minimum
9 Tax for private activity bonds. As was noted in
10 introductory remarks, the Chairman's modification
11 provides for the \$240-a-month parity of transit benefits
12 to parking benefits.

13 Then the last provision that I will make note of
14 relates to minimum required distributions from qualified
15 retirement plans and IRAs. The primary part of this
16 change is that after the death of a plan beneficiary the
17 general rule will now be the five-year rule that all
18 distributions from a qualified plan or an IRA must be
19 taken into income of the beneficiary within five years of
20 death of the original retiree, except in the case of a
21 newly defined eligible beneficiary, and eligible
22 beneficiaries are generally disabled and chronically ill
23 individuals.

24 That is a very brief overview, Mr. Chairman, Senator
25 Hatch. I would be happy to answer in more detail any

1 questions that you might have.

2 The Chairman. Are there any questions on the
3 modified mark?

4 [No response.]

5 The Chairman. Seeing none, the mark is now open
6 for amendment. Senator Thune?

7 Senator Thune. I have a quick question.

8 The Chairman. Sure.

9 Senator Thune. And that has to do with the CBO
10 estimate that at the end of the two-year authorization,
11 there is going to be a \$5.6 billion hole in the highway
12 account and \$2.8 billion surplus in the mass transit
13 account. Under the mark, I guess we want to know what
14 happens with the additional revenues raised above the
15 \$5.6 billion needed to ensure that the highway account is
16 not depleted.

17 Mr. Barthold. Senator Thune, I am not completely
18 familiar with the CBO projection that you just cited, but
19 I will call to your attention our document that we
20 produced this afternoon, JCX-14-12. What this shows is
21 our projections, and working in concert with the
22 Congressional Budget Office on this, of the general fund
23 and trust fund effects of the provisions in the
24 Chairman's mark, as modified.

25 If you go to the last page of that document you can

1 see the flows into the Highway Trust Fund that are the
2 result of the Chairman's mark, as modified, the draw-out
3 from the Leaking Underground Storage Tank Trust Fund that
4 the Chairman noted, and then the effects on the general
5 fund of some of the replacement revenue provisions that
6 are in the modified mark.

7 At the top of that page, those are the changes due
8 to the Chairman's mark, as modified. If you look at
9 footnote number one, essentially in the middle of that
10 page, you will see two lines that give the Congressional
11 Budget Office's baseline projection of trust fund
12 receipts under present law. So the lines at the top of
13 the page represent the change on top of the lines in that
14 footnote. Well, I hope that is responsive. As I said, I
15 was not quite familiar with the one projection.

16 Senator Thune. Mr. Lynch?

17 Mr. Lynch. Senator, may I seek to address your
18 question as well?

19 Senator Thune. Yes.

20 Mr. Lynch. You noted that the Congressional Budget
21 Office scores a \$5.6 billion deficit in the highways side
22 of the Highway Trust Fund and a positive balance of \$2.8
23 billion for the mass transit account to the Highway Trust
24 Fund.

25 The Chairman's modified mark would, first, restore

1 the highways side of the Highway Trust Fund to solvency,
2 putting \$5.6 billion to the highways side. It would
3 then, second, seek to put another \$2.8 billion in the
4 highways side. That \$2.8 billion would be equivalent to
5 CBO's score for the mass transit account having a \$2.8
6 billion positive balance at the conclusion of the
7 authorization September 30, 2013.

8 Third, what the modified mark proposes to do is to
9 create a new account within the Highway Trust Fund, a
10 solvency account, and the remainder of available money
11 would then go into this solvency account made available
12 for either highway or transit spending, set at the
13 discretion of the Secretary of Treasury, in consultation
14 with the Secretary of Transportation to make a
15 determination as to whether highways or transit is
16 spending down too quickly, and then either of those two,
17 either the mass transit account or the highways side
18 would be permitted to draw upon that solvency account in
19 order to ensure solvency.

20 Senator Thune. My understanding is that the
21 Federal Highway Administration has what has been a proven
22 cash management procedure that is based upon the maximum
23 estimated payment amount that would be necessary in any
24 given month, and they have always used sort of a 4:1
25 ratio, highways to transit. Under that model, the

1 highway account would be provided a \$4 billion cushion
2 and the mass transit account would be provided a billion-
3 dollar cushion. What you are saying is, that is not the
4 case under the mark.

5 Mr. Lynch. Senator, you are right in terms of how
6 the Federal Highway Administration and the Federal
7 Transit Administration typically spend. The Federal
8 Highway Administration, given more money to spend, spends
9 more and more quickly than the Federal Transit
10 Administration does. In the Chairman's modified mark,
11 however, the intent was to get to parity between the two
12 modes and then make flexibility available.

13 Senator Thune. And I would only point out, Mr.
14 Chairman, that that fails to provide the adequate
15 cushions in the Highway Trust Fund and uses this entirely
16 new fund, the so-called solvency fund, and leaves it up
17 to others to provide the safety net that the two accounts
18 would deserve. I will have an amendment, when we get to
19 amendments, to address that. But that answers my
20 question, thank you.

21 The Chairman. Senator Bingaman?

22 Senator Bingaman. I would like to ask Mr. Barthold
23 on the bank-qualified bonds provision that is in the
24 bill. First, I thank you, Mr. Chairman, for including a
25 portion of that amendment that I had earlier filed. But

1 I am somewhat concerned that as we now have it, it would
2 provide that this authority to issue up to \$30 million
3 worth of bonds for small issuers would begin on the
4 effective date of this act and expire the end of the
5 year.

6 If it were to be changed to be put off the time when
7 it began to the 1st of June and put off the time it
8 expired to the 1st of June till next year, do we have any
9 idea as to what the effect of that might be as far as the
10 cost of the amendment?

11 Mr. Barthold. Senator Bingaman, we have not
12 estimated that particular proposal. I think what we
13 would expect to happen economically is that some larger
14 potential issues would be delayed for a couple of months.

15 So if, for example, this legislation were enacted, let
16 us say March 1st, and if instead you said let us make
17 this effect for July 1st through the subsequent June, it
18 would be in some potential issuers' interest to delay
19 their financings until after July 1st. So I think we
20 would see a shift in activity.

21 But to your specific question, I do not have an
22 estimate of how the projection that we have in the table
23 that we provided to you today would change from that
24 particular amendment.

25 Senator Bingaman. Okay. Well, I may explore that

1 further with you, Mr. Chairman, when we get to that
2 amendment. But thank you very much.

3 The Chairman. Thank you, Senator.

4 Any other questions?

5 [No response.]

6 The Chairman. All right. The modified mark is
7 open for amendment.

8 Senator Hatch. Mr. Chairman?

9 The Chairman. I am sorry. There was one other
10 question. Thank you.

11 Senator Rockefeller. I often, in hearings, point
12 out that colleagues, but also people at the hearing,
13 should be aware that when a member of the administration,
14 whichever administration it might be, gives testimony,
15 particularly if that person is a reasonable rank in
16 government, that testimony has always been vetted by OMB.

17 It has always been vetted by OMB. It has never changed
18 under Republicans or Democrats.

19 Now I notice that the Congressional Budget Office
20 says that we need about \$5.5 billion for the DPW bill,
21 but we are looking for closer to \$10 billion. I think
22 part of that reason is because of the Office of
23 Management and Budget has different projections.

24 So, Mr. Lynch, the question I want to ask you: is it
25 not historically the position of this committee to rely

1 on the nonpartisan CBO numbers?

2 Mr. Lynch. Senator, it is. It is CBO who will
3 provide the scoring when we go to the floor, not Office
4 of Management and Budget.

5 Senator Rockefeller. All right. Thank you.

6 The Chairman. Thank you, Senator.

7 Senator Crapo. Mr. Chairman?

8 The Chairman. Senator Crapo?

9 Senator Crapo. For an amendment?

10 The Chairman. Right now we are for questions.

11 Senator Crapo. Oh, just questions?

12 The Chairman. Senator Hatch has a question.

13 Senator Hatch. Mr. Barthold, does Senator Wyden's
14 amendment regarding TRIP bonds that was adopted in the
15 modified mark make clear that the purchasers of these
16 bonds cannot strip these bonds? In other words, is it
17 possible under this proposal that purchasers can strip
18 off the tax credits on these bonds and sell them to
19 others?

20 I know the IRS has voiced concerns in the past about
21 the IRS's ability to trace the income from strippable
22 bonds. Therefore, if these bonds are able to be stripped,
23 that can lead to tax administration problems, it seems to
24 me. But I would like your viewpoint on that.

25 Mr. Barthold. Senator Hatch, let me clarify. The

1 proposal that is adopted in the Chairman's modification
2 does not amend the Internal Revenue Code to make bonds
3 tax credit bonds for purposes of Code Section 54.

4 So since we do not amend the Code, at the present we
5 do not create any authority for tax credit bonds under
6 the TRIP program. I do know that Senator Wyden has a
7 broader bill that has been working on where he would do
8 that, but the Chairman's modification does not go that
9 extra step of amending the Internal Revenue Code.

10 Senator Hatch. All right. I think that is it.

11 The Chairman. All right. The modification is open
12 for amendments. Senator Hatch is recognized.

13 Senator Hatch. My amendment would replace all the
14 offsets in the Chairman's mark except for the transfer of
15 revenue from, and modification of the financing rate of,
16 the Leaking Underground Storage Tank, or the LUST trust
17 fund, with alternative offsets and approval of the
18 Keystone XL Pipeline project.

19 My amendment would replace all of the offsets in the
20 Chairman's mark except revenues from the increase of the
21 financing rate and from the transfer of the LUST fund
22 with (1) open access to leases for drilling of oil and
23 gas in ANWR and the Outer Continental Shelf; (2) the
24 rescission of funds for the Advanced Technology Vehicle
25 Manufacturing Loan Program; and (3) the approval of the

1 Keystone XL Pipeline project.

2 By thinking of alternative ways to fund our highways
3 without increasing taxes not only can we create revenues
4 for the Highway Trust Fund, we can simultaneously create
5 jobs and spur economic activity with my amendment.

6 Currently, our Nation is not fully utilizing
7 available energy resources in Alaska, the Outer
8 Continental Shelf, and throughout the United States. In
9 fact, almost every State that is represented by a member
10 on this committee would benefit economically from
11 increased access to drilling for oil and gas.

12 In addition, there are current spending programs
13 that are not being fully utilized and could help to pay
14 for highway projects. Now, this proposal would transfer
15 \$1.5 billion in funding that is sitting on the sidelines
16 away from the Alternative Technologies Vehicle
17 Manufacturing Loan Program to help the under-funded
18 Highway Trust Fund.

19 Lastly, the Keystone Pipeline is vital to this
20 Nation's economic growth. Labor Unions have stated that
21 this is not just a pipeline, but a lifeline for thousands
22 of workers and thousands of people beyond that. It is
23 unfortunate that the need to appease, at least in my
24 estimation, some extreme environmentalists has outweighed
25 the chance for the 12.8 million unemployed to obtain one

1 of the 20,000 to 50,000 high-paying jobs this pipeline
2 would create in this very difficult economic climate.

3 I would just like to mention how messed up our
4 energy and trade policy has become. Right now, the Hugo
5 Chavez regime in Venezuela has become dependent upon our
6 import of their oil, yet we refuse to build a pipeline to
7 help import oil from our friends up north in Canada.

8 Now, to me that does not make sense, so I would urge
9 my colleagues to support this proposal. It is a decent
10 proposal. It is one that makes a lot of sense. It is a
11 proposal that creates a lot of jobs and I think it is
12 something that we really ought to do in this committee.

13 The Chairman. We could have a discussion, but
14 frankly after the end of the discussion I am going to
15 rule the amendment non-germane. If Senators wish to
16 speak, go ahead. I saw Senator Stabenow first.

17 Senator Stabenow. Well, thank you, Mr. Chairman.
18 I would just comment, and I appreciate the interest,
19 which I share, in increasing American supply as it
20 relates to oil and gas. But I just want to say for the
21 record that the Advanced Technology Vehicle Manufacturing
22 Program is actually creating jobs in America now. When
23 we raise fuel economy standards a few years ago, we put
24 in a loan program so companies would re-tool to be able
25 to keep production of small, new energy-efficient

1 vehicles in the United States.

2 Ford received the first re-tooling loan. They have
3 in fact retained 1,900 jobs in Michigan alone and re-
4 tooled their largest plant for the new Ford Focus
5 electric and hybrids, and so on. They are now, as a
6 result of that and their investments in batteries,
7 bringing jobs back from Mexico. It is a real success
8 story.

9 We have a number of other opportunities as well. It
10 is a loan, they are paying it back. I would love to see
11 that program actually move more quickly in Department of
12 Energy. There are dollars available because they are
13 still in the process of approving loans, but this goes
14 directly to our competitiveness internationally and
15 keeping manufacturing jobs in America.

16 So I, just for the record, would strongly oppose
17 removing any of the dollars at a time when we actually
18 have companies using that to retool plants to be able to
19 create jobs in America or save jobs.

20 The Chairman. Any further discussion?

21 Senator Enzi. Mr. Chairman?

22 The Chairman. Senator Enzi?

23 Senator Enzi. Mr. Chairman, realizing that you are
24 going to rule this non-germane, I still wish that we
25 could do this. If we divided the amendment down into the

1 four separate parts I think probably we could pass three
2 of the parts anyway, and that would more than take care
3 of two years' worth of revenue to fund two years' worth
4 of highways, and also provide us some kind of a road map
5 for the future. The Outer Continental Shelf, bonus bids
6 alone, might well provide the money to offset this.

7 So I hope we would not just write off this whole
8 thing and that we would take a look at it before it goes
9 to the floor, because there is some potential for raising
10 some real revenue here and getting it done within the
11 time frame that we are talking about for funding it.

12 Thank you, Mr. Chairman.

13 Senator Hatch. Well, if I could add, we estimate
14 that we could produce about \$4 billion in new revenues
15 just from the drilling component of this amendment. So
16 the Senator is right, this would more than pay for the
17 two years, it seems to me.

18 Senator Cantwell. Mr. Chairman?

19 The Chairman. The Senator from Washington.

20 Senator Cantwell. Thank you, Mr. Chairman.
21 Listen, I know we all know that gas prices going up are
22 a very big challenge to us and we need to find
23 alternatives to foreign oil. I know that Senator Hatch
24 has been a leader on things like plug-in electric
25 vehicles and credits for them and some of the important

1 things that we have tried to do. But just drilling more
2 as our strategy to pay for this bill is just not going to
3 get us there.

4 We had a discussion and had a panel of oil experts
5 testify before this committee in which they said we are
6 price takers, not price makers, saying that there was
7 nothing that they could do to affect the world price of
8 oil. So when they testify to that effect, it is as if we
9 think now that we can go ahead and open up all of this
10 drilling in the Arctic Wildlife Refuge or off the beaches
11 of Destin, Florida, an area I definitely not want to see
12 any drilling in, and I would say the people of Florida
13 would also say they do not want to see drilling there.

14 The Energy Information Agency says that those, if
15 you opened up all the offshore drilling in America, that
16 it would only decrease the price of gasoline 3 to 5
17 cents, and it would not do that until 2030.

18 So we are looking at something here that, Mr.
19 Chairman, I think just is not the approach. You have
20 outlined here in this legislation a way to pay for
21 infrastructure and move forward, and I think that your
22 initiative that is in the underlying bill is the real
23 initiative and we should not go down a road that we know
24 is not really going to lower the price for us in the near
25 future.

1 Senator Coburn. Mr. Chairman?

2 The Chairman. Senator Coburn?

3 Senator Coburn. Less than 2 percent of our
4 offshore area is leased, and it is not just about
5 lowering the price of oil. We are importing \$300 billion
6 a year in oil that we could produce here. The question
7 will come in the future, based on the valuation of the
8 dollar: is international oil going to get more expensive,
9 not less?

10 So it is both a national security issue, it is an
11 economic issue in terms of the balanced payment, and it
12 is a jobs issue. There is no question we could put
13 millions of Americans to work in this country if we have
14 a cogent energy policy, a cogent, safe energy policy,
15 exploring our own resources.

16 The Federal Government owns 650 million acres of
17 land in this country. Less than 8 percent has ever been
18 available for lease for natural gas. Of that, less than
19 10 percent of that 8 percent has ever been permitted. So
20 the Congressional Research Service tells us we have more
21 oil, more natural gas than China, Saudi Arabia, and
22 Canada combined.

23 Yet, we are going to sit here and not have a way to
24 pay, a cogent way to pay for a highway bill when the
25 resources are under our nose that we can develop safely

1 and in an environmentally friendly way, and yet we refuse
2 to do it. Although the Chairman is ruling this amendment
3 non-germane, I agree with my colleague from Wyoming we
4 ought to look at the components of it that are germane
5 and do something about it.

6 In 25 years, maybe we will be in alternative energy.

7 But in the meantime, we are going to be totally
8 dependent on the Middle East, Venezuela, and others for a
9 large portion of our oil. We know we can change that if
10 we in fact would.

11 So the question is, it is not whether or not we are
12 going to burn carbon-based fuel, we are. The question
13 is, where do they come from and what is the smartest
14 policy for this country? The smartest policy is to use
15 our own resources rather than import them from Hugo
16 Chavez and the Middle East and disturb a relationship
17 with Canada. Steven Harper is in China today negotiating
18 a pipeline deal to send Canadian par sands oil to China.

19 How does that help us? It does not.

20 Senator Hatch. Mr. Chairman?

21 The Chairman. Senator Hatch?

22 Senator Hatch. I agree 100 percent with what the
23 distinguished Senator from Oklahoma. Look, we have got
24 to wake up around here. We have got plenty of oil, we
25 are just not willing to drill for it because of what I

1 consider to be extremism on the part of some
2 environmentalists. And not all environmentalists, but
3 some. Frankly, we all know it is there. We have not
4 even mentioned the oil shale and other potential oil that
5 we could have.

6 I remember when the five big oil company executives
7 appeared here. I think I was the only Republican here at
8 the time because all the others were down at the White
9 House. But I remember, I think it was Shell's CEO who
10 said that they had to spend \$4.5 billion, or something
11 like that, up in Alaska to get properly prepared and they
12 could not even get the leases.

13 Now, I think, if I understand it correctly, they are
14 in the process of getting those leases, probably because
15 of that hearing. But we have got to wake up around here.
16 The distinguished Senator is right, we are risking our
17 future by not doing what we know we can do. Frankly, we
18 cannot run this country without oil and gas.

19 I have worked very hard to try and develop hybrid
20 cars, plug-in hybrid cars, fuel cell cars, electric cars,
21 et cetera, et cetera, as all of you have on this
22 committee as far as I am concerned. But no matter what
23 we do over the next number of decades, 95 percent of our
24 energy comes from oil, gas, coal and nuclear.

25 We are not developing what we should develop to keep

1 our country strong. It does involve national security,
2 it involves imposition of higher costs on the poor and on
3 those who are working people, and we just sit here and
4 twiddle our thumbs rather than do this. Look, the
5 distinguished Chairman is going to rule this non-germane
6 and I am willing to withdraw it because of the
7 distinguished Chairman's ruling, for this time.

8 But let me tell you something, I hope that we will
9 put this into the payroll tax bill so that we quit
10 playing with this and we start doing the things that
11 really are in the best interests of our country. It is
12 amazing to me, the industrial States, many of which are
13 Democrat States, are the people who are not going to
14 touch this. I just do not understand it, personally.

15 Sooner or later we are going to have to wake up and
16 do what has to be done here and get our country moving
17 again the way it should be moving because we cannot move
18 ahead without it. It is tragic, absolutely tragic, that
19 the Prime Minister of Canada is now negotiating with the
20 Chinese to take Canadian oil because we are too stupid to
21 allow a pipeline to go through, even though the unions
22 want it, the workers want it, we need it for our national
23 security, we need it for our national economics, and some
24 environmentalists who do not want it are stopping this
25 administration from doing what they know they really

1 should do.

2 So I am willing to withdraw the amendment if the
3 Senator is going to rule it non-germane, but it is not
4 going to go away. We are going to have to vote on this
5 sooner or later in ways that hopefully will bring us
6 together and get us doing what is in the best interests
7 of our country.

8 The Chairman. Senator Bingaman?

9 Senator Bingaman. Mr. Chairman, let me just make a
10 few points. First, the Senator from Oklahoma says that
11 only 2 percent of the OCS, Outer Continental Shelf, is
12 currently leased. My information is that 90 million
13 acres of the OCS were offered for lease and 6 million
14 were taken by the industry. That is since 2009.

15 So, there has been a lot of Outer Continental Shelf
16 that has been offered, there is no question about that.
17 The number of drill rigs operating in this country is at
18 an all-time high. The number of barrels of oil being
19 produced on an annual basis is at an all-time high.

20 The amount of natural gas being produced in this
21 country is at an all-time high. In fact, we have got
22 natural gas producers, some headquartered in Oklahoma,
23 who are shutting in production because the price is too
24 low, because the price of natural gas is the lowest it
25 has been in decades and they cannot make money producing

1 natural gas at this price. So, they are shutting in
2 production.

3 So everyone is saying, oh, it is a terrible thing
4 here. We are not allowing any oil and gas production.
5 It is just totally -- the comments are just unrelated to
6 the reality which exists.

7 The other point that I think is pretty obvious is,
8 the Senator from Oklahoma says we ought to have the
9 period of time that we are bringing in revenues match up
10 with the period of time that we are spending the money.
11 That is a good principle.

12 But I do not see how that squares with the idea that
13 we ought to pay for a two-year highway bill by committing
14 future revenues from oil and gas. Those revenues are
15 going to be coming in for decades. Now, why should we
16 give those revenues away to pay for two years of highway?

17 It does not make any sense to me. But the whole idea
18 that this country is refusing to develop its natural
19 resources is just not related to reality, Mr. Chairman,
20 and I just keep hearing it here.

21 We had a hearing in the Energy Committee last week.

22 We brought in the Energy Information Administration, we
23 brought the International Energy Agency in and asked him
24 what the situation was. They said that we are leading
25 the world in increasing our production of oil and gas.

1 There is no other country in the world that is increasing
2 its production of oil and gas as much as this country did
3 in 2010. So I think that a lot of the rhetoric we are
4 hearing around here just does not square with reality.

5 Senator Hatch. Mr. Chairman, let me just add to
6 this.

7 The Chairman. Yes.

8 Senator Hatch. CBO has estimated that the revenue
9 effect for drilling in ANWR -- this is over a 10-year
10 period. I just got this from CBO. It estimates that
11 drilling in ANWR would raise \$2.5 billion over 10 years.

12 CBO continues to work on completing the estimates for
13 drilling offshore and onshore. They assured my staff
14 that they would provide those estimates to all of you as
15 soon as they are completed and approved by the director.

16 Now, as we wait for CBO's current estimate, for
17 offshore drilling in 2009, CBO scored S. 1462, which
18 would open leases on the Outer Continental Shelf, as
19 raising \$1.32 billion over 10 years. So we are talking
20 about 10 years, now.

21 In addition, this proposal would also open access to
22 some onshore leases, including additional oil shale
23 leases. So at the very minimum we know that we have at
24 least \$4 billion in revenues from increased drilling.

25 Now, I can get you CBO's latest numbers as soon as I

1 get them. It is my understanding that they are very
2 close to calculating this information, as I have said.
3 We do have a revenue estimate from CBO regarding the
4 rescinding of funds under the Advanced Technology Vehicle
5 Manufacturing Loan Guaranty Program as a reduction of
6 \$1.5 billion in outlays.

7 Now, look. In this bill we are going to take monies
8 out of pension plans, IRAs, rather than do what we should
9 do for highways through energy production? I mean, it
10 seems to me that is a non-starter, but that is where we
11 are headed with the Chairman's mark. I know that this
12 has been a very difficult thing, to get to the point
13 where the Chairman has had to be on this. I commend him
14 for the ingenuity of his mark, but this is a good answer
15 to our problems over the next 10 years.

16 Frankly, I do not care what anybody says, we are
17 deficient in being able to take care of our own oil and
18 gas needs. Now, it is true that we are awash in natural
19 gas. That is a great thing. We are going to have to put
20 a natural gas grid in, and all the other things that that
21 means. But right now we could solve this problem without
22 going to IRAs to solve it.

23 The Chairman. Further discussion? Senator Nelson?

24 Senator Nelson. I want to add to the Chairman of
25 the Energy Committee's comments. Senator Hatch, there

1 are 37 million acres that are leased in the Gulf of
2 Mexico and the central and western Gulf. Only 7 million
3 of those 37 million acres are producing. So, there is
4 plenty of leased area. Now, your staff is giving you some
5 kind of facts and figures, but they do not refute the
6 facts.

7 Senator Hatch. Well, they are telling me that this
8 administration has tied up the ability to be able to do
9 the work on those leases. I think --

10 Senator Nelson. You just heard the Chairman of the
11 Energy Committee tell you otherwise. But let me just
12 say --

13 Senator Hatch. No, I did not.

14 Senator Nelson. Well, he is --

15 Senator Hatch. Tell me we are not importing a lot
16 of foreign oil. I mean, I would like somebody here to
17 tell me we are not doing that and we are just hunky dory.

18 Senator Nelson. Now, let me show you how your
19 amendment, which thankfully you are going to withdraw, is
20 defective because in doing all these offshore lands you
21 have included the eastern Gulf of Mexico. The eastern
22 Gulf of Mexico is barred by statute, and it is the only
23 place, from oil drilling. In the first place, there is
24 not much oil out there. Mother Nature did not have all
25 of those -- I am trying to talk to you instead of your

1 staff talking to you.

2 Senator Hatch. ANWR is probably barred by statute
3 right now as well.

4 Senator Nelson. I have not been representing
5 Alaska.

6 Senator Hatch. I understand that.

7 Senator Nelson. I am representing Florida.

8 Senator Hatch. You do a good job of representing
9 Florida. I am not --

10 The Chairman. I think we had better start wrapping
11 up the discussion on this amendment.

12 Senator Nelson. All right.

13 The Chairman. Anybody else want to speak?

14 Senator Nelson. Mr. Chairman, I am not through. I
15 have got three points to make.

16 The Chairman. All right.

17 Senator Nelson. Number one, there is not very much
18 oil out there off of Florida because that is what Mother
19 Nature created. Number two, the economy of Florida from
20 our tourism, people wanting to go to the beaches that
21 stayed away in droves once the Deep Water Horizon spill,
22 and it did not even come on most of the Florida beaches,
23 a huge hit.

24 But number three, and this is what people do not
25 realize, the largest military testing and training area

1 in the world for the U.S. military is off the State of
2 Florida. It is basically the entire Gulf off of Florida
3 in Federal waters. When the Navy shut down Vieques, the
4 Atlantic Fleet Training and Testing, where do they test
5 and train now? It is in the Gulf of Mexico.

6 I have letters from two successive Secretaries of
7 Defense that say we cannot have drilling out there where
8 we are doing this testing and training. That is the
9 military testing area which is basically this area that
10 is covered by statute prohibiting it. The first one was
11 Secretary Rumsfeld. I have the letter. The second one
12 was Secretary Gates. So, I just want the record to
13 reflect why the eastern Gulf of Mexico off of Florida is
14 barred by statute from the drilling.

15 Senator Enzi. Mr. Chairman, very quickly.

16 The Chairman. All right. Senator Enzi?

17 Senator Enzi. I used to do a little bit of
18 accounting for some of the oil companies. When you do a
19 lease bid you have to take whatever lease the government
20 puts up. But the only place you drill is where the oil
21 is. It works better that way. Consequently, they are
22 buying a lot more land than what they get to drill on.
23 So you have to open up, obviously, more territory and
24 collect a lot more money for the Federal Government in
25 order for them to have a site that they can drill on.

1 Some of those places that we say do not have any oil now,
2 it is all a matter of the price of the oil, too.

3 And, yes, natural gas is down. Natural gas folks
4 took on the coal folks to prove that they were cleaner
5 and showed how much natural gas was available. The more
6 natural gas you have available, the lower the price goes.
7 So, they caused their own price decline.

8 Senator Kerry. Mr. Chairman?

9 The Chairman. Senator Kerry?

10 Senator Kerry. Mr. Chairman, you know what is
11 amazing about this? It is sort of the non-factual basis
12 on which some of this is taking base. We have just had
13 the greatest increase in American production in modern
14 memory. I think we are now net exporting.

15 To sit here and suggest that when 35 or 37 million,
16 as the Senator from Florida says, acres are available and
17 only 6 million are actually producing, I mean, for years
18 now the oil companies have been sitting on existing
19 leases and they are not exploiting them.

20 So to sit here and start talking about this crisis
21 in terms of opening up territory, 90 million acres were
22 offered since 2009, since President Obama came in.
23 Ninety million acres were offered and only 6 million were
24 purchased. This is just the most specious thing I have
25 ever heard in my life.

1 You want to talk about getting America moving again?
2 It is in the alternative, renewable, and clean energies
3 where you have a \$6 trillion market, with about 4.5
4 billion users today, and it is going to go up to 9
5 billion users in the next 20, 30 years.

6 Other countries are rushing towards that, including
7 Saudi Arabia and Gulf States that produce oil,
8 incidentally. They are investing more in alternative and
9 renewable energy than we are and they are the biggest
10 producers of oil. I mean, this is just the most specious
11 debate I have ever heard in my life. It just does not
12 make sense. Anyway, it is not going to -- but it is
13 important, I think, to debate facts here.

14 Senator Hatch. Well, if I could just make one last
15 comment.

16 The Chairman. All right. I do not know if we are
17 advancing the ball here, but go ahead.

18 Senator Hatch. Yes. One last comment. That is
19 that my amendment would not touch anything within 25
20 miles off the coast of Florida, so the Vieques situation
21 would not be a problem.

22 Senator Nelson. That is not true.

23 Senator Hatch. Well, I think it is.

24 Senator Nelson. The military testing area goes 225
25 miles off of Florida, off of the west coast of Florida.

1 From Tampa, from Naples, it goes as far almost as 300
2 miles. Up in the panhandle, the military testing area is
3 protected to 125 miles south of the panhandle.

4 Senator Hatch. All right. I will accept that.

5 The Chairman. All right.

6 First on the merits, second on the process. The
7 amendment offered by the Senator from Utah, frankly,
8 would strip off most of the offsets we have worked very
9 hard to negotiate out. There may be differences of
10 opinion what those offsets should be, but we have worked
11 very hard to try to find a consensus.

12 These provisions that are in the Senator's
13 amendment, that is Advanced Technology Vehicle savings,
14 opening of ANWR, and the approval of Keystone XL, will
15 sink the bill. This bill would never pass if this
16 amendment is adopted. That means no highway bill.

17 I believe the Keystone XL should be approved in some
18 other forum, some other time. I strongly support the
19 Keystone Pipeline. I think it makes sense for America's
20 jobs and energy. I do not like oil going over to China,
21 et cetera. But even in this bill I think that the
22 inclusion of the Keystone would take down the bill. So
23 on the merits, I do not think it is right to strike most
24 of the offsets and put in provisions which will, in
25 effect, kill the bill.

1 On process, this amendment is not germane because it
2 includes materials not in this committee's jurisdiction.

3 A lot of it is in the jurisdiction of the chairman from
4 New Mexico, the Energy Committee.

5 So I hope the Senator withdraws the amendment
6 because if the Senator does not withdraw the amendment I
7 have no alternative but to rule it non-germane.

8 Senator Hatch. I will be happy to withdraw the
9 amendment, hoping that those who are working on the
10 payroll tax bill will put it in there because we have got
11 to wake up and do some of these things or we are going to
12 be in real trouble. I just appreciate you have worked so
13 hard on this bill, but I will be glad to withdraw it at
14 this point.

15 The Chairman. I appreciate the Senator's effort.
16 I deeply appreciate the Senator's ability to work on this
17 bill in a very congenial way, in a constructive way, and
18 I deeply appreciate it. The amendment is withdrawn.

19 Senator Crapo. Mr. Chairman, bring an amendment?

20 The Chairman. The next amendment is Senator
21 Rockefeller.

22 Senator Rockefeller. I actually am not going to
23 push this. I will withdraw it. But I simply remake the
24 point that Senator Cardin and I made, and that is that if
25 you have a part of this country which has the formulation

1 of mountains that precludes people from being able to
2 afford to build through those mountains and the huge cuts
3 that it takes, that is why the Appalachian highway
4 development system was born and that is why it should
5 remain.

6 Let me just be stark about it. In my State of West
7 Virginia, if Carderage, which only has a few miles left,
8 were finished it would transform the nature of the
9 economy of West Virginia, which as my colleagues know is
10 not strong. In five years it would be a different place.

11 It is called access, in and out. Highways do that.

12 Now the EPW has sort of combined all of these
13 programs into one. I think that is wrong. I am saying
14 for fiscal years 2012 and 2013, that the Appalachian
15 development highway system should be continued and that
16 governors should be mandated--not mandated, but continue
17 to be required--to spend the money on the Appalachian
18 highway development system until it is filled and
19 finished.

20 I understand that this is not going to prevail and I
21 withdraw it, but people can talk all they want about
22 drilling oil and natural gas and going for coal, but take
23 it at least from me that when you do these things, just
24 like when you are talking about transportation you had
25 better be talking about safety at the same time, the

1 machines that do this, the pressure for drilling way
2 down, the fracking, all of that is of monumental
3 consequence largely unknown because of the geological
4 differences in this country.

5 So when you take that on, what has happened in coal,
6 what has happened in a lot of other areas, and the oil
7 spill obviously being that, is a continuing threat and it
8 is one that I take very seriously and one which I am much
9 more prepared to stand up to than I was formerly.

10 I present the amendment and I withdraw the
11 amendment.

12 The Chairman. The amendment is withdrawn.

13 Senator Crapo. Mr. Chairman?

14 The Chairman. Senator Crapo?

15 Senator Crapo. Mr. Chairman, I have an amendment
16 before the committee which would strike the black liquor
17 offset. As I think most members of the committee are
18 probably painfully aware, we have dealt with this issue
19 before. The provision prohibits taxpayers from claiming
20 the cellulosic biofuels credit for unprocessed or
21 excluded fuels. As I said, it has been popularly
22 described as the black liquor provision.

23 Including this provision is going to be very harmful
24 to a number of taxpayers, including major businesses in
25 my State and many of the other States of members of this

1 committee who are relying on the current law. This
2 retroactive reach of this change in the tax law would
3 simply be unfair.

4 I have proposed an offset very similar to that which
5 Senator Hatch just proposed. Mine does not include all
6 of his provisions but it includes, instead of the black
7 liquor provision, seeking to obtain those revenues by
8 expanded production of oil and gas exploration in Alaska,
9 the Outer Continental Shelf, and in other areas which we
10 have just had a very robust discussion of and I will not
11 continue that discussion at this point except to say
12 this.

13 I strongly agree that we should take that step at
14 whatever time we have the opportunity to do so and make
15 certain that we at least help America get focused on
16 producing and being less dependent on foreign sources of
17 our energy.

18 That being said, I understand the Chairman's
19 position on the ruling that the Chairman has made about
20 germaneness. We have been trying to find an alternative
21 offset over here. In fact, Senator Kyl has been working
22 on another provision that he is concerned about, and I
23 believe that we have successfully reached a point where
24 we can have an alternative offset proposed that will not
25 only allow us to clean up and clear out the black liquor

1 provisions, but also some of the other objectionable
2 provisions that we find over here and come up with a much
3 better and more acceptable offset.

4 So with the Chairman's permission I would not pursue
5 my amendment at this point for a vote and would ask that
6 Senator Kyl be able to propose his alternative, and then
7 maybe the two of them could be wrapped up.

8 The Chairman. Any other discussion? Senator
9 Stabenow?

10 Senator Stabenow. Thank you, Mr. Chairman. I just
11 want to share the concerns of Senator Crapo on this
12 particular amendment. I very much appreciate your
13 modification of the provision in the mark. But we have
14 in Michigan 154,000 jobs, 10 percent of our manufacturing
15 sector in our forest products industry, and unfortunately
16 even with the modification this is something that would
17 really hurt our economy in Michigan.

18 So I would like very much to see some way to have a
19 modification that would have a pay-for that is more
20 acceptable. I cannot support the pay-for that Senator
21 Crapo currently has, but would hope that we might find
22 something that we could all come to agreement on.

23 The Chairman. I appreciate that, Senator, and also
24 your remarks, Senator Crapo. Frankly, we all know that
25 the so-called black liquor, there are really two of them.

1 One is a refundable 50 cents, the other is a non-
2 refundable \$1.01. They are gifts to the pulp and paper
3 industry. No firm who manufacturers pulp or paper or who
4 manufacturers black -- in order to gain a tax credit.

5 It was a gift, unfortunately, by this Congress that
6 was a totally unintended effect to give this gift, a
7 pretty lucrative gift, to these companies. So we are in
8 a position to try to undo a mistake that was made. The
9 question is how to best undo this mistake.

10 Now, different companies are in different positions.
11 Some were not making money a few years ago. They are
12 making money now so they want to file amended returns and
13 go back and take advantage of a non-refundable larger
14 credit. Earlier they took advantage of a refundable
15 smaller credit.

16 Actually, I think this raises a good bit of money to
17 help pay for the highway bill. The mark raised about
18 \$2.78 billion by denying further use of the two credits,
19 and then we modified the mark, which reduces that down to
20 \$1.5 billion. That is, it only denies the larger \$1.01
21 credit for black liquor. I understand different
22 companies would like to keep what they have. Everybody
23 loves to keep gifts that they get.

24 But the question is, how would this do this? So I
25 would ask for Senators to be flexible and to work with us

1 as we try to figure out a way to deal with this question,
2 so I appreciate your offer, Senator, to withdraw the
3 amendment. I guess it is on the condition we work
4 something out with -- the Senator from Arizona?

5 Senator Crapo. Yes, Mr. Chairman. If I could just
6 make a quick comment. It is, as I have mentioned before,
7 an issue that we have dealt with many times and we did
8 resolve it in 2010. The credit is no longer available
9 for any production prior to 2010.

10 The question we have before us is, for that
11 production are we going to allow the credit to continue
12 to be allowed? Without getting into the whole debate
13 again, the fact is, it was the law. These companies rely
14 on the law and they make their investment decisions and
15 their management based on the expectation of how they are
16 going to be able to utilize these credits that were built
17 up before we changed the law in 2010.

18 So anyway, I would hope that we could set my
19 amendment aside, see if we cannot resolve the offset
20 issue in the way that we have been negotiating here, and
21 then hopefully get it resolved that way in a much better
22 and more satisfactory way to everyone involved.

23 The Chairman. All right.

24 Senator Kyl, do you want to be recognized?

25 Senator Kyl. Yes, Mr. Chairman. Thank you. I

1 would offer the Amendment #1, which relates to the
2 subject I spoke to in my opening statement. But I think
3 we are going to be able to get this resolved. This was
4 an offset that pays for almost half of the entire cost of
5 the bill but had never been discussed with any of our
6 staff. It was included for the first time in this
7 substitute mark at 1:42 a.m., or 1:49 a.m. this morning,
8 whatever time it was.

9 What it does is require an early pay-out of
10 inherited IRAs, that is a pay-out over five years rather
11 than at the time ordinarily the person inheriting it
12 would have been required to pay it out. It would raise
13 about \$4.6 billion.

14 Because we have not talked about that offset before,
15 because there are issues with it, my amendment would
16 strike that offset. It would replace it with another
17 offset which I am not going to describe in detail since I
18 am going to withdraw the amendment based upon some
19 assurances that the Chairman has provided.

20 This was a last-minute thing, as he acknowledged,
21 because of trying to get the bill done. I appreciate the
22 problems of having to get something done here kind of at
23 the last minute. It does show that when we try to rush
24 our work, sometimes we can make mistakes.

25 But I understand the Chairman will work to ensure

1 that there is an adequate substitute for this offset
2 prior to the time we would have to vote on the bill on
3 the floor of the Senate. Based upon that and any
4 comments that the Ranking Member might have, and the
5 Chairman confirming that, I think I can simply withdraw
6 the amendment.

7 Senator Hatch, did you have anything on that?

8 Senator Hatch. Yes, if I could, Mr. Chairman.

9 I support the motion of my friend from Arizona, to
10 strike the inherited IRA provision. Just set aside for
11 the moment the policy questions that this provision
12 raises without proper vetting. There is no connection
13 between inherited IRAs and the Highway Trust Fund. I
14 just have to say that every Republican would support the
15 Kyl amendment eliminating this offset.

16 Now, we do not have to vote on it but we do have to
17 replace this offset before we vote on the finance title
18 on the floor. So I am happy to join with the Senator who
19 wants to withdraw his amendment and I will work with the
20 distinguished Chairman and others so that we can move
21 this forward. But I think Senator Kyl raises a very
22 important point.

23 The Chairman. Thanks, Senator. I appreciate the
24 offer by the Senator from Arizona. This frankly is
25 complex. On the one hand, this is a provision that really

1 is being abused, that is, IRAs. IRAs are intended for
2 retirement. They are being used by some taxpayers to give
3 tax-free benefits to second and third, maybe even fourth
4 generations. That is not what was intended.

5 We already have in the law what is known as required
6 minimum distributions: if you reach a certain age you
7 have got to start distributing the build-up in the IRA
8 and that is a taxable event. But they are being used now
9 for other purposes that is not retirement. So I think it
10 is important to put the "R" back into IRAs, that is, they
11 are for retirement, not as an estate planning tool for a
12 second and third generation.

13 On the other hand, I understand the Senator's
14 concern that this is a provision that was not vetted to
15 any degree. It came in late, and basically not because of
16 any nefarious intentions, it is just basically, it is
17 hard to put this bill together.

18 Different Senators had different objections about
19 different provisions and we it is very important to get
20 this bill up and passed because the deadline is fast
21 approaching. Otherwise, the government cannot make
22 distributions from the Highway Trust Fund for the States
23 to build highways.

24 I do believe that there are ways to skin this cat,
25 another way to skin this cat. That is, find the revenue

1 in another way, not with this provision. Perhaps this
2 provision, the subject can be taken up in tax reform in
3 the whole scope of all the different things we are going
4 to do in tax reform.

5 But in the meantime, I have some ideas, and you and
6 I have discussed other ideas that might be a more
7 appropriate way to make sure there are sufficient funds
8 for the Highway Trust Fund here. I pledge my willingness
9 to work with the Senator to try to find that provision we
10 discussed, or maybe some other. In the meantime, I
11 appreciate the Senator's willingness to withdraw the
12 amendment.

13 Senator Kyl. Thank you, Mr. Chairman. And both
14 Senator Crapo and I have another meeting we have to get
15 to right now. Please excuse me. It is not that I am
16 walking out after your statement just now.

17 The Chairman. And you are going to vote for the
18 bill, right?

19 Senator Kyl. Well, depending on the Thune
20 amendment. But I may avoid voting against the bill.

21 The Chairman. All right. That is helpful.

22 Senator Crapo. So, Mr. Chairman, can we return
23 then to my amendment?

24 The Chairman. Yes. Sure.

25 Senator Crapo. Is the Chairman willing to utilize

1 -- I understand that the alternative offset that we are
2 talking about does have adequate potential in it to also
3 remove the black liquor provisions.

4 The Chairman. That is true. I do not want to
5 confine myself to only that provision. There could be
6 others that creative minds have come up with.

7 Senator Crapo. Other offsets.

8 The Chairman. Yes. In the meantime.

9 Senator Crapo. So is the Chairman --

10 The Chairman. Yes, I am willing to work with the
11 Senator, to work with the black liquor tax issue. But I
12 want to work in a way that does move us down the road to
13 getting rid of this unintended benefit in a fair,
14 flexible way. But I understand the Senator's concern,
15 and we have discussed it and we will find a way to deal
16 with the Senator's concerns.

17 Senator Crapo. All right. Thank you, Mr.
18 Chairman.

19 The Chairman. Senator Bingaman?

20 Senator Bingaman. Mr. Chairman, I would like to
21 offer Amendment #1 on the list, Bingaman Amendment #1.
22 This amendment is essentially the bill that Senator
23 Grassley and I have introduced in this Congress, and also
24 in the previous Congress. It is S. 836. The amendment
25 has the support of the American Trucking Association, the

1 American Automobile Association, the American Highway
2 Users Alliance, and the Owner/Operator Independent
3 Drivers Association.

4 What the amendment does is to correct the
5 depreciation and amortization rules in the Tax Code that
6 are leading to exceedingly long leases of our Nation's
7 public highways to private operators. One example is the
8 Chicago Skyway. It was leased in 2005 for 99 years. I
9 should mention Senator Durbin is a supporter of this
10 amendment that I am offering.

11 The current rules in the Tax Code allow a private
12 company that leases a highway or a public roadway like
13 this to claim accelerated depreciation to cover the cost
14 of the road in 15 years. According to the Bureau of
15 Economic Analysis, the useful life of the road is at
16 least 45 years and it should not be depreciated in 15
17 years.

18 A company can also amortize the tolling rights over
19 15 years and the economic reality is that those assets
20 should be amortized over the term of the lease, the 99
21 years, in this case, the same rate over which they would
22 generate income.

23 So to claim these tax benefits the leases have to
24 last many decades. GAO says that in order to have
25 constructive -- I think the IRS has determined that in

1 order to have constructive ownership and be able to claim
2 the tax benefits you have got to have a lease that is at
3 least 75 years in length.

4 So you do have built in almost a requirement that if
5 they are going to lease a public highway to a private
6 company, they do it this way. The reality of what we now
7 have in the Tax Code is that the public winds up paying
8 for public highways that are then leased to private
9 companies three different times.

10 It obviously pays for the public highway when it
11 builds the public highway using funds that we raised and
12 put into the Highway Trust Fund. The taxpayer then pays
13 again through this subsidy that is in the Tax Code where
14 we basically say these private companies can write this
15 off in 15 years. That is the attractiveness. That is
16 why they are in there wanting to lease these highways.
17 Then of course the taxpayer has to pay the toll that is
18 going to be charged by the private company to get to
19 drive on the highway. So that is the third time.

20 I need to make it clear that I am open to private
21 involvement in building new infrastructure. I support
22 the idea of an infrastructure bank. The amendment is
23 narrowly targeted at a specific situation, namely when an
24 existing public road is leased to a private company. It
25 does not apply to any new roads that private companies

1 might build, it does not apply to a situation where the
2 State simply contracts with a private company to operate
3 the State's toll booths.

4 So the amendment would merely provide that when an
5 existing highway is privatized, the private operator's
6 tax recovery period should be on par with economic
7 reality. So, that is the purpose of the amendment.
8 There is no offset required. If anything, this will,
9 depending upon how many of these occur in future years,
10 generate revenue for the Treasury.

11 I hope all members can support the amendment. I
12 think it is a good amendment. I urge colleagues to vote
13 for it.

14 The Chairman. Discussion? Senator Coburn?

15 Senator Coburn. Could I ask the Senator from New
16 Mexico, based on this useful life of a highway as
17 evaluated at 45 years, can you name one that has lasted
18 45 years that does not have to be resurfaced,
19 reconcreted? Can you name one in New Mexico?

20 Senator Bingaman. No, I am sure they all have to
21 be maintained and repaired. There is no question about
22 that.

23 Senator Coburn. On Interstate 40 through Oklahoma
24 is in its fourth iteration of totally being redone.

25 Senator Bingaman. Right.

1 Senator Coburn. Maybe its third. But it was built
2 in 1958. So we have rebuilt that road three times. So
3 the question I am asking, and I am not disputing what
4 these people are saying, I am just having trouble
5 understanding why 45 years is the right number instead of
6 15 because it seems to me the actual useful life of a
7 highway is about 15 years. Maybe the bridges are 20 or
8 25, but it seems to me the highway life is much less than
9 45 years.

10 No, I think that is right. But it is my
11 understanding-- and maybe someone at the table here can
12 tell us--but my understanding is that a private company
13 can write off the cost of any repairs at the time they
14 incur those costs once they own one of these highways.

15 The Chairman. I would like to ask Mr. Barthold a
16 question here. What are we dealing with here? I mean,
17 how many companies participate in these arrangements?
18 The other question I have is, will this change to 45
19 years discourage investment or not? I just do not know.

20 What is the average length of a highway? I mean, the
21 life of a highway. It is kind of Senator Coburn's point.

22 Mr. Barthold. Well, I do not know for certain, Mr.
23 Chairman, the average life of a highway. I do know that
24 the 45-year figure that Senator Bingaman quoted is based
25 on work by the Bureau of Economic Analysis at the

1 Commerce Department where they do a number of studies of
2 economic lives of assets as part of their analysis for
3 determination of Gross National Product, productivity,
4 growth in national income.

5 There are relatively a few number of existing
6 roadways that have been purchased and privatized. That
7 is one of the things that makes it difficult to really
8 make an economic projection of what the revenue
9 consequences might be from the Senator's bill, as Senator
10 Bingaman noted.

11 To your point on changing the recovery period, when
12 we slow recovery periods, slowing down the recovery
13 period means that you tax more income in the earlier
14 period for the same amount of recovery, so that reduces
15 the after-tax return to any investment. So a slower
16 recovery period would make any one investment somewhat
17 less attractive, and so it would make a private bidder
18 presumably bid a lower price to acquire the lease to that
19 asset.

20 My colleagues and I do not think we have good data
21 on rates of return from what relatively few private
22 acquisitions there have been right now to say whether
23 slowing recovery periods, and therefore reducing the
24 after-tax return, would have a really marked effect on
25 interest in these sorts of projects. So, I really cannot

1 address that last, final point.

2 The Chairman. But what would be a comparable asset
3 in trying to compare? Because clearly there has got to
4 be some comparability here with respect to assets.

5 Mr. Barthold. Well, highways do tend to be unique,
6 but we do provide recovery for railroad track beds. In
7 other words, another transportation system subject to
8 heavy weight, heavy wear.

9 I would have to check with a couple of my colleagues
10 on what the recovery period for track beds are. I think
11 it is actually -- for a tunnel bored through a mountain
12 is considered to have a 50-year life, I think for
13 purposes of the Internal Revenue Code. That is one I
14 think I remember.

15 Senator Bingaman. I believe railroad tracks also
16 have 50-year recovery.

17 Mr. Barthold. Maybe not the track, sir.

18 Senator Bingaman. Right. The road, then.

19 Mr. Barthold. There is the a distinct track and
20 the road bed.

21 Senator Bingaman. Yes. The road bed itself.

22 Mr. Barthold. I would have to check that with a
23 couple of my colleagues.

24 The Chairman. All right. Are we going to create
25 any unintended consequences here with disparities in the

1 Code? I know we never do that, but I just wonder if some
2 come to mind here. This is new. I do not know what its
3 effect is.

4 Senator Hatch. Mr. Chairman?

5 The Chairman. I would ask Mr. Barthold if you have
6 any other reaction.

7 Mr. Barthold. Well, I do not think I have a
8 reaction beyond what I just noted, that when you change
9 the recovery periods, then it does make the after-tax
10 return lower, makes it somewhat less attractive. I guess
11 we would have to think more about unintended
12 consequences.

13 It is not creating any situation that is different
14 from some others that the committee has dealt with in the
15 past when you have changed recovery periods for different
16 classes of assets, so I cannot think an abuse would
17 really arise from this per se, if that is what you were
18 after.

19 Senator Hatch. Mr. Chairman?

20 The Chairman. Senator Hatch?

21 Senator Hatch. Mr. Barthold, just clarify this for
22 me. Would you consider this a tax increase, this
23 amendment?

24 Mr. Barthold. A tax increase sometimes gets to be
25 in the eyes of the beholder.

1 Senator Hatch. I am talking about you.

2 Mr. Barthold. I did say that the effect --
3 remember, if you pay out \$100 for an asset and that asset
4 produces a stream of income, we tax that income annually,
5 less the cost recovery that we permit you each year. If
6 the cost recovery is relatively rapid there is lower
7 taxes in the first year, higher taxes in the later years.
8 If we slow the recovery period, that reverses.

9 So an economist would say, in economic terms, if you
10 take the present value of that with the present value of
11 the after-tax cash flow that has been reduced or that the
12 present value of the tax payments has increased.

13 Senator Hatch. I guess what I am getting to is,
14 over the 10 years it would be an increase in tax
15 revenues?

16 Mr. Barthold. Excuse me. I am sorry, Senator.

17 Senator Hatch. Over the 10 years it would amount
18 to an increase in tax revenues. Is that right?

19 Mr. Barthold. Yes. If we had, again, a baseline
20 relative to baseline measuring here, and Senator Bingaman
21 noted that there is a problem just in terms of talking
22 about how frequently these occur. But on a hypothetical
23 sale that would have occurred today if we were to change
24 the recovery periods, there would be more tax receipts
25 from that transaction over the 10-year budget period.

1 That is the nature of lengthening out cost recovery.

2 Senator Burr. Mr. Chairman?

3 The Chairman. Senator Burr?

4 Senator Burr. Mr. Chairman, if I understood
5 Senator Bingaman correctly this would not apply to new
6 roads constructed by a private entity. Is that correct?

7 Senator Bingaman. That is exactly right.

8 Senator Burr. Well, let me just ask this. If a
9 private entity builds a new road, what is the current tax
10 law for the recovery period?

11 Mr. Barthold. It is as the Senator described. It
12 would be 15 years.

13 Senator Burr. Fifteen years.

14 Mr. Barthold. And just to clarify, the tunnel bore
15 and the railroad road bed are 50-year asset life.

16 Senator Burr. My only point is to the Chairman's
17 question of, do we create a different set of tears. The
18 answer is, you do. If you sell a public road to a
19 private entity, Senator Bingaman is suggesting we extend
20 the recovery to 40 years. If you have a private entity
21 build a new road, their recovery period is going to be 15
22 years based upon current law. Am I stating that
23 correctly?

24 Mr. Barthold. That is correct, Senator.

25 Senator Burr. So, yes. It would create an

1 inequity.

2 Senator Coburn. Mr. Chairman?

3 The Chairman. Senator Coburn?

4 Senator Coburn. One other concern that we ought to
5 think about, and I am not sure that Senator Bingaman is
6 not right on this, I do not know. But I know one of the
7 things that we heard in testimony when we had the former
8 governor of Pennsylvania here was that States are trying
9 to leverage their assets today to be able to do other
10 things. The unexpected outcome of this may be, we may be
11 markedly limiting the States' ability to leverage what
12 they consider their assets today.

13 So I am not necessarily opposed to what you are
14 trying to do but I sure think we need a little better
15 knowledge about what is going to be the outcome of this
16 in terms of how it is going to affect all these States
17 that are planning right now to privatize some roads and
18 what is going to happen, because it may markedly lessen
19 their ability to leverage what they consider their
20 assets.

21 Senator Bingaman. Mr. Chairman, could I just
22 respond on that? I think the idea that a State is trying
23 to leverage its ability to fund things at this point
24 essentially is saying they are trying to get an up-front
25 payment by a company because of these Federal tax

1 provisions which make this an attractive thing for a
2 company to come in and say, all right, we will pay you a
3 bunch of money in order to get to depreciate this thing
4 over the next 15 years, and then we have the right to
5 charge a toll on it for 99 years.

6 We have depreciated that right, that asset of that
7 tolling right over 15 years but we get to charge the toll
8 for 99 years. So that makes it worthwhile for us to come
9 in and give you a bunch of money. The problem is, of
10 course, everybody in Pennsylvania, or whatever State, is
11 having to pay that toll for the next 99 years, in
12 addition to having had to provide the tax subsidy so that
13 the company could buy the highway in the first place, and
14 it was a highway that they already built with their tax
15 dollars.

16 Senator Coburn. Well, we just had testimony that
17 the difference in the revenues, based on your proposal
18 versus what we have now, is only the time value and the
19 money. The only difference in revenue is to the Federal
20 Government on a 45-year versus 15 is the time value of
21 the money. There is no difference. So there is no
22 difference in the contract over 99 years in terms of net
23 profit to the company. All you will do with this is
24 advance the rate at which taxes are paid.

25 But that is not really my concern with this. My

1 concern is, we may be taking options off the table for
2 some very severely cash-strapped States today and
3 limiting their ability to do something that they think is
4 in their best interests. The net revenue to the Federal
5 Government, outside of the time present value of money,
6 is the same. Because you are going to amortize the same
7 purchase price over a longer period of time, we are just
8 going to collect the money up front faster, correct?

9 Senator Bingaman. Well, yes. But the time value
10 of money is a pretty important item.

11 Senator Coburn. Well, not when the interest costs
12 are zero percent.

13 Senator Bingaman. Well, I think it is a pretty
14 important item. I mean, as to the Federal Government,
15 when does the Federal Government get its tax dollars?
16 The Federal Government is just like anyone else. You
17 want to get your tax dollars earlier so that you can do
18 things with them. What we are doing here, is we are
19 giving away tax dollars.

20 We are giving away a stream of revenue in the early
21 years and that is what makes this such an attractive deal
22 for companies to come in and say, yes, we will lease your
23 public highway. You have already built it, we will lease
24 it. We will charge the toll. We will take the money
25 that comes from everybody paying their toll.

1 Senator Enzi. Mr. Chairman?

2 The Chairman. Yes, Senator Enzi?

3 Senator Enzi. Mr. Chairman, my main concern with
4 Senator Bingaman's amendment is that, my State, for
5 example, gets roughly 92 cents on the dollar for every
6 dollar we send to Washington, so we are a donor State and
7 we are a growing State and we are looking for ways to
8 provide and keep up with our infrastructure needs.

9 So our governor and our State legislature is
10 actively involved in private activity bond financing in
11 order to provide more flexibility to fill the gap left by
12 the falling gas tax revenue. As we all know, we all have
13 that problem.

14 So my concern with the amendment, and I do not
15 believe this is the intent but I think the consequence
16 might be to result in making many of these projects less
17 financially feasible and resulting in fewer projects and
18 limiting flexibility for the States.

19 I do not know how to exactly address the problem
20 Senator Bingaman raises, but I worry about the
21 consequences of it, limiting access to funds that are
22 necessary to build roads and a falling revenue stream
23 because of the gas tax.

24 The Chairman. This all comes down to who pays and
25 when. That is all this is, and that is a judgment call.

1 Frankly, I think the Senator has a good point. Senator
2 Cornyn, I understand what you are saying, too. I am sure
3 States will be less able to use this if they get the
4 amortization spread out longer.

5 I am kind of bemused at this discussion because it
6 is reminiscent of a discussion of, well, revenues -- the
7 duration of revenue received to match expense. In
8 effect, that is what Senator Bingaman is trying to do
9 here, is make sure that the revenue receipts tend to more
10 closely match the use and the cost of the highway. But
11 you know, life is complicated. The Tax Code is
12 complicated. We all make our choices here. Anyway, I am
13 going to call for a vote.

14 All those in favor of the Bingaman amendment say
15 aye.

16 [A Chorus of Ayes.]

17 The Chairman. Those opposed, no?

18 [No response.]

19 The Chairman. In the opinion of the Chair the ayes
20 have it. The amendment is passed.

21 Any further amendments? Senator Enzi, I understand
22 you are next.

23 Senator Enzi. Mr. Chairman, yes. I have an
24 amendment. I have been trying to ensure that we would
25 have some relationship to the revenue that is going to go

1 for highways and the highways themselves. I noted that
2 on the motor fuel user fee, I prefer to call it a user
3 fee because that fee goes directly into building the
4 things that you can use your gas on, bridges or roads.

5 But yes, it is a tax. We set the tax rate in 1993
6 and we did not peg it to inflation at all, so the costs
7 of construction have gone up dramatically but the gas tax
8 has not gone up dramatically. It stayed exactly the same
9 level that it was then.

10 Now, incidentally the price of gas at that time was
11 between \$1.00 and \$1.10 a gallon, and now it is about
12 \$3.57 to \$3.95 a gallon. Now, I am not talking about
13 indexing this to the price of gas, I am talking about
14 indexing it to the price of inflation which is
15 considerably less than that over that period of time.

16 In fact, I think had we indexed it in 1993 it would
17 be 7.5 cents higher now than it was then. Not much of an
18 increase, but that is enough of an increase to fund what
19 we are trying to do right now. If we were to institute
20 this indexing now it would not go into effect for another
21 12 months and it would be based on this year's inflation.

22 If it had been instituted a year ago under my
23 amendment and were put in now, the gas tax, which was
24 18.4 cents, including that leaking underground storage
25 fee, would go to 18.9 cents a gallon, in addition. The

1 diesel fuel and kerosene would go from 24.7 cents to 25
2 cents and special fuels would go the same as the regular
3 gasoline.

4 Now, it has been mentioned several times that this
5 is a very sensitive thing and that politically it is not
6 feasible to do that now. I do not know at what point we
7 try to get the tax to match up with what it is supposed
8 to do. If we had indexed it to the price of gas in 1993,
9 today we would have 64 cents a gallon in taxes for this
10 and it would fund more than what people are dreaming of
11 doing right now on it.

12 I am not suggesting nearly that kind of an increase.
13 This is not something easy to do. Just drafting this
14 amendment brings a lot of pressure, but it is something
15 that we have to consider. I am not going to make
16 everybody vote on it now, I am going to withdraw it, but
17 I want you to be thinking about it because we have to
18 have some way that is directly related to fuel that will
19 pay for what we are going to use it on, which is the
20 highways and the bridges, as the time that we need to do
21 it, not over some 10-year period when we may not be able
22 to collect it but at the time we need to use it to do the
23 infrastructure.

24 There are a lot of options out there that deal with
25 that, but all of them--all of them--deal with changing

1 the gas tax. I think it is the responsibility to go and
2 I am willing to take all the flack that people are going
3 to put out as a result of that because I think it is the
4 right thing to do. But after discussion I will be happy
5 to withdraw it.

6 The Chairman. All right. Thank you, Senator, for
7 the discussion.

8 Senator Cardin?

9 Senator Cardin. Well, Senator Enzi, first, I want
10 to applaud you because I think you have raised a
11 fundamental problem that we have on the revenues going
12 into the Highway Trust Fund. That it has not been
13 growing at a reasonable rate allows us to do the type of
14 highway and bridge construction that we need in this
15 country.

16 So I applaud you for a way to make sure that the
17 revenue remains relatively constant to the needs that are
18 out there. With the current per-gallon tax, that does not
19 happen.

20 We also have the challenging that we are using a
21 per-gallon gasoline tax where we are trying to reduce
22 consumption by increasing the efficiencies of the use of
23 our fuels, which works, again, contrary to the
24 availability of adequate revenues to deal with needs. We
25 are getting less dollars-per-mile traveled today than we

1 did years ago.

2 So I agree with your assessment that this is an
3 issue that we have to deal with. I also understand that
4 this bill is carefully balanced from the point of view of
5 trying to get this to the finish line.

6 I understand you will be withdrawing the amendment,
7 but I wanted you to know I hope there is support on both
8 sides of the aisle to look at realistic ways that we can
9 match our transportation needs with revenues so that we
10 can really invest in America's future and do what we need
11 to do.

12 The Chairman. Any further discussion? Senator
13 Rockefeller?

14 Senator Rockefeller. Senator Enzi, I think you do
15 this committee a real favor.

16 Senator Enzi. By withdrawing?

17 [Laughter.]

18 Senator Rockefeller. Well, no. Frankly, he has
19 raised the issue that really matters around here, and you
20 have done it in a way which does not cause us to vote on
21 it now, but it will in the future. It is the whole user
22 tax concept. If you want to ride on it, you want to
23 drive on it, you have got to pay for it.

24 Senator Carper. Mr. Chairman? Mr. Chairman?

25 The Chairman. Yes, Senator Carper?

1 Senator Carper. Yes. As another recovering
2 governor over here, I want to second what I heard Senator
3 Rockefeller and Senator Cardin say. Some of you know I
4 go to the Detroit Auto Show just about every year. I
5 have been going for a long time. The reason why I go is,
6 until very recently Delaware had two auto plants.
7 Senator Stabenow knows we had a Chrysler plant and a GM
8 plant and we lost them both in the last two years, very
9 sadly.

10 When I went to the Detroit Auto Show five years ago,
11 all they had in their reveals -- they have these reveals
12 where they unveil new products and concept cars and so
13 forth. The only thing they had on the reveals were
14 trucks, big ones, Humvees and all kinds of gas-guzzling
15 vehicles five years ago.

16 I was back there last month, and Debbie was there,
17 too. We did not see much of that. We saw incredibly
18 energy-efficient vehicles that are getting 40 miles per
19 gallon, made in this country by Americans that we will
20 sell here and export across the world. They are not
21 getting 15, 16, 17, 18 miles per gallon, they are getting
22 35, 40, 45 miles per gallon.

23 For us to depend on and say we are going to continue
24 to have a gas tax, that is about 18.5 cents per gallon.
25 As with the efficiency of our auto fleet goes up, up, up,

1 that is just not going to work. The numbers do not add
2 up. We are not going to be generating from that fuel
3 source anywhere close to the numbers that we need to
4 maintain our own transportation system. So I, too, want
5 to join my colleagues in thanking Senator Enzi for his
6 very thoughtful proposal.

7 Some of you may recall, with the Deficit Commission,
8 the majority of the Deficit Commission members actually
9 endorsed a concept, a variation of a concept that Senator
10 Voinovich and I had suggested to raise some revenues for
11 the Transportation Trust Fund. What they suggested is
12 that for the next 15 quarters--that is every three
13 months--the gas tax user fee would go up by about a penny
14 per gallon.

15 So, gosh, 15 quarters, that would be about 4 cents,
16 4 or 5 cents total at the end. That completely funds--
17 completely funds--an aggressive six-year transportation
18 program. Completely funds a six--year transportation
19 program. These are not huge amounts of numbers that are
20 needed.

21 I will close by saying, colleagues, we have an old
22 saying in Delaware: things worth having, they are worth
23 paying for. To be successful in the 21st century we need
24 a world-class infrastructure. We have to be willing to
25 pay for it. I think the American people are actually

1 ahead of us on this front. Thank you.

2 The Chairman. Thank you, Senator.

3 I might also say I think that when unemployment
4 comes down, when the housing overhang is reduced, we are
5 then in a position, a better position, to enact something
6 like this. The time is not far away when clearly this
7 country is going to move some of the production suggested
8 by Senator from Wyoming.

9 Senator Enzi, do you wish to withdraw your
10 amendment?

11 Senator Enzi. I will withdraw my amendment. I
12 would also add though that the amount of increase that we
13 are talking about here is less than the daily fluctuation
14 at the gas pump.

15 The Chairman. The amendment is withdrawn.

16 Senator Stabenow, do you have an amendment?

17 Senator Stabenow. I do, Mr. Chairman. I will be
18 offering and withdrawing it, but I do want to lay it out
19 for my colleagues. It builds on what Senator Rockefeller
20 was talking about on safety. I know the Commerce
21 Committee is deeply involved in that issue.

22 But this amendment addresses what we know are the
23 prevalent causes of commercial truck crashes: stability
24 control, lane departure warning systems, collision
25 mitigation systems, and brake stroke monitoring systems.

1 In 2009, a University of Michigan study found that 42
2 percent of roll-overs and loss of control crashes could
3 be prevented with electronic stability control.

4 By the way, the crashes could save over \$2 billion a
5 year. This amendment would provide a tax credit to truck
6 manufacturers and fleet owners that install these four
7 safety devices. It would save lives, prevent crashes
8 every year. It is something that I hope, going forward,
9 we will take a serious look at.

10 It is broadly supported by everyone from the Motor
11 and Equipment Manufacturers' Association, the American
12 Bus Association, the Trucking Association, and on and on
13 with companies, as well as the American Trauma Society,
14 and many other groups. It is a serious issue around
15 truck safety. I think providing a tax credit for
16 installation of these kinds of devices would more than
17 pay for itself.

18 So, I would just offer and withdraw at this time.
19 But Mr. Chairman, I think this is something that would be
20 in the public interest to pursue as we go forward. So,
21 thank you.

22 The Chairman. Thank you, Senator. The amendment
23 is withdrawn.

24 Senator Cornyn?

25 Senator Cornyn. Thank you, Mr. Chairman. I would

1 like to offer Cornyn Amendment 1, and I will withdraw the
2 amendment. But you will see, I hope, the reason why I
3 raise it at this point. This amendment would prevent the
4 Treasury Department from expanding current banking
5 reporting requirements with respect to interest earned in
6 the bank deposits of foreign investors.

7 The amendment is a bill that I introduced, along
8 with Senators Rubio and Hutchison, and also has
9 bipartisan support from members of this committee. Under
10 longstanding tax policy, deposit income belonging to
11 foreign investors that is not connected with U.S.
12 business or trade is not taxed by the Federal Government.

13 This policy, of course, attracts capital to the United
14 States and we know capital investment is important for
15 job creation.

16 For generations these investors have placed their
17 funds in the institutions in my State and across the
18 country because of the safety of our banks.
19 Unfortunately, the proposed regulation by Treasury flies
20 in the face of our Nation's longstanding efforts to
21 attract capital.

22 Last year I wrote to Treasury Secretary Geithner
23 expressing my concern that this regulation will bring
24 serious harm to the economy in my State and around the
25 country, should it go into effect.

1 Simply put, this really will cause billions of
2 dollars in deposits to be withdrawn from American banks
3 and invested in countries with less onerous reporting
4 requirements with no tangible benefit to U.S. taxpayers.

5 According to a 2004 study by George Mason University, a
6 scaled-back version of the regulation would result in an
7 outflow of at least \$88 billion in deposits from American
8 financial institutions.

9 This legislation is supported by a number of
10 organizations across my State, including the San Antonio
11 Hispanic Chamber of Commerce, the Independent Bankers
12 Association, and the Texas Bankers Association.

13 Mr. Chairman, I would like to ask unanimous consent
14 to make part of the record a letter of support from the
15 Independent Community Bankers of America, the Financial
16 Services Roundtable, the Texas Bankers Association, as
17 well as the Florida, New York, and California Bankers
18 Associations.

19 The Chairman. Without objection.

20 [The prepared statements appear in the appendix.]

21 Senator Cornyn. Mr. Chairman, as I said, I will
22 withdraw the amendment but I did want to bring this to
23 the attention of my colleagues. My understanding is the
24 comment period has ended, but Treasury still has the
25 proposed amendment. Given its negative influence on

1 capital formation and investment here in the United
2 States, with no benefit whatsoever since these
3 investments are not taxable, I would hope the Treasury
4 would reconsider its ill-advised proposal.

5 Thank you, Mr. Chairman. I will withdraw the
6 amendment.

7 The Chairman. Thank you.

8 Senator Nelson. Mr. Chairman, I would ask consent
9 to enter into the record the Florida Bankers Association
10 letter on the same subject. I would just like to simply
11 say in conclusion that the proposed Treasury regulation
12 would cause U.S. banks to send a letter each year
13 informing their foreign account holders that information
14 regarding their interest earnings was going to be
15 reported to their home government.

16 Now, you can imagine if you are a Venezuelan how you
17 are going to enjoy this being reported to Hugo Chavez's
18 government, with the result that what is going to happen
19 is they are going to withdraw their deposits in American
20 banks.

21 So this legislation, I am involved on, no one is
22 going to keep their deposits in U.S. banks if they are
23 concerned that their income information may be used to
24 extort them by corrupt officials back home.

25 The Chairman. Any further discussion?

1 [No response.]

2 The Chairman. Senator, I assume, are you
3 withdrawing your amendment?

4 Senator Cornyn. Yes, Mr. Chairman.

5 The Chairman. The amendment is withdrawn.

6 Senator Cantwell, you are next.

7 Senator Cantwell. Thank you, Mr. Chairman.

8 I wanted to call up Cantwell Amendment #2. I want
9 to thank Senator Snowe for her co-sponsor. This was
10 originally based on legislation introduced by myself,
11 Senators Vitter, Carper, Cochran, Inouye, Landrieu, and
12 Murray. I want to thank them as well for their help and
13 support of this.

14 Mr. Chairman, I think many of the staff have pointed
15 out this is the first mark-up we have had since the
16 health care legislation, so when it comes to
17 opportunities to pass transportation related legislation
18 on these tax policies, this has been one of the
19 opportunities.

20 Yet, shipbuilding has been a constant issue of
21 wanting the United States to make more investments in
22 this issue. Obviously Congress started in 2004 trying to
23 strengthen the Merchant Marine and to stimulate economic
24 activity in the maritime sector.

25 This legislation is about our national security

1 interests and making sure that we have U.S. flag tanker
2 capacity to support energy product moving through,
3 providing for the Department of Defense, and critical
4 asset manpower necessary when the military needs that
5 kind of sea lift.

6 In the 1975 law it provided for deferral of shipping
7 income only if the earnings were reinvested abroad for
8 qualified foreign shipping assets. So then when it came
9 to the 2004 Repatriation Act, everybody else received
10 that repatriation except for shipbuilding because of that
11 1975 language.

12 So this underlying amendment would repeal that and
13 would qualify in the Tax Code the ability for these
14 companies to reinvest in the United States for
15 shipbuilding activities.

16 I know, Mr. Chairman, this is something that we may
17 need to continue to work on, but I would certainly hope
18 that the Chairman and members of the committee would take
19 a look at and support this concept, either in the
20 manager's amendment or somewhere else in the process.

21 The Chairman. Senator Nelson?

22 Senator Nelson. When she is through.

23 The Chairman. Oh, I am sorry. Any discussion?
24 Senator Snowe?

25 Senator Snowe. Yes. Thank you, Mr. Chairman. I

1 want to applaud the Senator from Washington for offering
2 this amendment and to bringing attention to a very
3 significant issue to a very critical industry in this
4 country. Regrettably, this unintentional provision that
5 was included in the Tax Code back in 1976 really has not
6 had an adverse impact on the shipping industry in
7 America.

8 So it basically gives the companies an incentive to
9 invest in foreign operations rather than investing here
10 at home, so there it is a limited provision to recapture
11 that money back between 1976 and 1986, and was
12 unintentional. It was the result of an unintended
13 consequence in the way in which it was drafted.

14 But when you think about the impact and the effects
15 it has had on the shipbuilding industry, as one who hails
16 from a shipbuilding State, unfortunately we are seeing so
17 much of that go abroad in countries where it is heavily
18 subsidized.

19 I think that the way that the Senator has approached
20 this amendment is to make sure that any of that money
21 that is recaptured would have to go back into domestic
22 manufacturing operations in shipbuilding, otherwise they
23 would pay a penalty, so that we could encourage the
24 investments here which, frankly, I think is a
25 fundamentally industry to this country. We should get

1 back to shipbuilding and having our ships being built in
2 America rather than being built abroad. Thank you.

3 The Chairman. Further discussion?

4 [No response.]

5 The Chairman. I thank the Senator for offering
6 this amendment. Frankly, you make a good point, Senator,
7 and I very much want to work with you as you work out a
8 solution to this exception.

9 Senator Cantwell. Thank you, Mr. Chairman. I will
10 withdraw the amendment.

11 The Chairman. The amendment is withdrawn.

12 Senator Nelson? Go back and forth? All right.
13 Senator Thune, you are next.

14 Senator Thune. Thank you, Mr. Chairman. As I
15 mentioned earlier, in order to adequately manage the
16 highway account the Federal Highway Administration has
17 set up a proven cash management procedure that is based
18 on their maximum estimated payment amount in any given
19 month. Under that model the highway account is provided
20 a \$4 billion cushion and the mass transit account is
21 provided a \$1 billion cushion.

22 As staff explained in the walk-through, CBO
23 estimates at the end of the two-year authorization
24 provided for by the Chairman's mark the highway account
25 will be in the red by \$5.6 billion, while the mass

1 transit account will be in the black by \$2.8 billion.

2 So this amendment ensures that both the highway and
3 mass transit accounts have the adequate cushions
4 recommended by the Federal Highway Administration and
5 that any remaining funds be split in the historical 80/20
6 split.

7 The measure before us fails to provide these
8 adequate cushions and instead creates an entirely new
9 fund, this so-called solvency fund, that leaves it up to
10 somebody else to provide that cushion rather than having
11 us do it here in the Congress.

12 So I think it is important to remember that under
13 the current law and the bill passed out of the
14 Environment and Public Works Committee, States have the
15 flexibility to spend some highway dollars on transit and
16 vice versa.

17 But what history has shown is that the money only
18 flows one way, from the highway account to the transit
19 account. I think it is in all of our interests to protect
20 these accounts. By supporting this amendment you are
21 helping to ensure that they remain solvent and minimize
22 the chance that further congressional action via
23 infusions is going to be needed. So I would ask, Mr.
24 Chairman, that members support this amendment.

25 The Chairman. Any discussion?

1 Senator Schumer. Yes, Mr. Chairman.

2 The Chairman. Senator Schumer?

3 Senator Schumer. Yes. I think that this amendment
4 is not a fair amendment and I think the Chairman's mark
5 is a fair compromise. Look, we need a balance and we all
6 know that these projections are not matters of science.
7 We have an obligation to keep the funds both solvent.

8 To just say let us make sure highways is solvent but
9 ignore transit because transit we think will be all
10 right, is not fair. It would be just as unfair for us to
11 do the mirror image, those of us who support mass
12 transit, and say let us make sure that all these funds go
13 to make sure the transit fund is solvent and the highway
14 fund will be all right.

15 We have already seen, between the different
16 estimates of CBO and OMB, that these projections, as I
17 said, are not science and go all over the lot. Those of
18 us on mass transit initially wanted the mirror image of
19 what my friend from South Dakota is asking for, something
20 that just keeps the mass transit fund solvent.

21 I think the Chairman has sort of come up with a fair
22 compromise, in a certain sense cut the Gordian knot,
23 keeping a fund to make sure we are solvent and we do not
24 have to dip into more deficit funds, but saying let us
25 use it for whichever one, or both, prove not to be. So

1 it is a fair compromise and I would have to oppose my
2 colleague's amendment.

3 The Chairman. All right.

4 Senator Cardin. Mr. Chairman?

5 The Chairman. Senator Cardin?

6 Senator Cardin. Mr. Chairman, I also oppose this
7 amendment. We have a very diverse country and the needs
8 in South Dakota are different than the needs of Maryland,
9 the needs of New York are different than the needs in
10 Utah.

11 I think it speaks to the process that we have used
12 in reporting the bills from committee that we had a
13 unanimous vote in the Environment and Public Works
14 Committee dealing with the highway part of the bill,
15 unanimous vote in the Banking Committee dealing with the
16 transit issues.

17 I think we have hit a balance which is appropriate
18 for the highway funding and the transit funding. I think
19 Senator Schumer is absolutely correct. We want to make
20 sure that both accounts are adequately funded, and that
21 is why we do have a cushion in this bill, to make sure
22 that the funds will be there. I applaud the Chairman for
23 doing that.

24 But to try now to pick winners and losers if we have
25 shortfalls, to me, undoes that balance. So I would urge

1 my colleagues to reject this amendment. It is important
2 that we fund what we say we are going to do, whether it
3 is a highway program in Oklahoma or a transit program in
4 New York. I think this bill gives us that sense that we
5 are going to be able to fund what we said we are going to
6 do. It is well funded within the two-year window, and I
7 would just urge us to reject the Thune amendment.

8 The Chairman. Senator Kerry?

9 Senator Kerry. Well, I will not belabor it, but I
10 strongly align myself with the comments that have been
11 made. Everybody understands that there are uncertainties
12 in these scores and the fact is that there are varying
13 estimates on the shortfall in the highway fund or in the
14 mass transit fund.

15 I think that what the Chairman has done, and it is
16 very difficult to do, is try to effect the best balance
17 possible of interests here. I regret that the amendment
18 that Senator Thune is putting forward simply undoes that
19 balance. It is a delicate balance and I just think it
20 would destroy our ability to be able to have a bill.

21 The Chairman. Senator Menendez?

22 Senator Menendez. Mr. Chairman, I think your mark
23 is a fair compromise. It sets the right balance so that
24 we can ensure adequate funding for both highway and mass
25 transit for which millions of Americans depend upon

1 critically.

2 I understand the highway provisions and am
3 supportive of it, but at the end of the day sometimes
4 when you look at the numbers of people who use mass
5 transit versus those who use the highway, it is pretty
6 significant.

7 So I think we have a responsibility to ensure both
8 funds remain solvent, and I think your mark does that.
9 Just to make the point, a few weeks ago CBO thought the
10 highway account would need \$12.9 billion to remain
11 solvent. Now they are down to around \$5.6 billion.

12 They also said that transit would remain solvent,
13 but OMB's--and I know we use CBO--most recent projection
14 on the other hand says the transit account needs \$2.9
15 billion. So there is not an absolute science here.
16 There is no perfect answer, but I think that you came the
17 closest to ensure that whichever account needs the
18 resources--it may end up being all highway--is able to
19 draw from it in the way in which you devise it. I hope
20 that balance is what we will keep here in the bill.

21 Senator Thune. Mr. Chairman, the only thing I
22 would say in response to everything that has been said by
23 folks on the other side of this amendment is, what undoes
24 the balance is this bill. This is historical. I mean,
25 it has always been a 4:1, 80/20 split when it comes to

1 highway and transit.

2 The Federal Highway Administration has advised us
3 about what kind of a cushion they need to protect us
4 against having to do some sort of infusion of the Highway
5 Trust Fund and the number on that is \$4 billion. The 4:1
6 represents what has historically been the ratio, if you
7 will, between highways and transit. It is consistent
8 with what we have done in the past.

9 Senator Kerry. There is a distinction. That is in
10 the total amount, whereas we are now trying to come up
11 with a balance that deals with the projected shortfalls.

12 So the formula is not the same. You do not apply the
13 formula for the total to the formula to deal with
14 shortfall. I think that is really the distinction here.

15 Senator Schumer. If my colleague would yield. The
16 4:1 balance is kept in the overall highway bill. It is
17 not changed. But if one--either one, because I have got
18 a lot of highways in New York State and we have a lot of
19 mass transit--of the balances falls out of whack you do
20 not say keep it at 4:1, whether it is highways or the
21 other. You make the balance whole so you stay at the
22 4:1.

23 Senator Thune. Well, exactly. The reason you are
24 at 4:1 is because that is how traditionally it spends
25 out, it is 80 percent highway, 20 percent transit.

1 Senator Coburn. Mr. Chairman?

2 The Chairman. Senator Coburn?

3 Senator Coburn. We would not be having this
4 discussion if we would embrace Senator Enzi's position
5 and muscle up the courage to do what is necessary to fix
6 the funding for the highway trust fund.

7 Senator Kerry. So you want to index it here and
8 now?

9 Senator Coburn. I am happy to. I would be happy
10 to vote for that right now.

11 Senator Kerry. Everybody ready?

12 Senator Coburn. The point is, the amendment has
13 been withdrawn. But the point I am making is, we are
14 having a discussion now.

15 Senator Kerry. I would go for it.

16 Senator Coburn. Mr. Chairman, we are having a
17 discussion now.

18 Senator Schumer. You would pass the amendment and
19 kill the bill. Do not do that.

20 Senator Coburn. We are having a discussion now
21 because we refuse to do what we all know is necessary for
22 the highway trust fund. Why do we not do what the
23 American people ask us? Even though there is a negative
24 wash-back on it, why do we not do it?

25 Let us fix the thing. Everybody on APW would be

1 happy. Every highway department in the country would be
2 happy. Our kids ultimately would be happy and we
3 actually would fix the problem. We are treating symptoms
4 and we are not treating the disease. We need to be
5 treating the disease.

6 The Chairman. I see no other Senators seeking
7 recognition. I might say to my good friend from South
8 Dakota that I understand South Dakota is very much a
9 highway State. I might say that Montana is a highway
10 State. I will do all I can to assure the 4:1 ratio is
11 maintained. That has been very important to me over the
12 years and I want to make sure that is done.

13 Senator Thune. Well, the only thing, Mr. Chairman,
14 is we can say that but we hand that responsibility off
15 now to somebody else.

16 The Chairman. We will make sure that that is
17 maintained.

18 Senator Thune. Well, I wish I had a higher level
19 of confidence that when somebody downtown starts making
20 these decisions, that they are going to do that. But I
21 do not believe that they will.

22 Mr. Chairman, I ask for the yeas and nays.

23 The Chairman. A recorded vote is asked for. The
24 Clerk will call the roll.

25 The Clerk. Mr. Rockefeller?

1 Senator Rockefeller. No.
2 The Clerk. Mr. Conrad?
3 The Chairman. No by proxy.
4 The Clerk. Mr. Bingaman?
5 Senator Bingaman. No.
6 The Clerk. Mr. Kerry?
7 Senator Kerry. No.
8 The Clerk. Mr. Wyden?
9 The Chairman. No by proxy.
10 The Clerk. Mr. Schumer?
11 Senator Schumer. No.
12 The Clerk. Ms. Stabenow?
13 Senator Stabenow. No.
14 The Clerk. Ms. Cantwell?
15 Senator Cantwell. No.
16 The Clerk. Mr. Nelson?
17 Senator Nelson. No.
18 The Clerk. Mr. Menendez?
19 Senator Menendez. No.
20 The Clerk. Mr. Carper?
21 Senator Carper. No.
22 The Clerk. Mr. Cardin?
23 Senator Cardin. No.
24 The Clerk. Mr. Hatch?
25 Senator Hatch. Aye.

1 The Clerk. Mr. Grassley?
2 Senator Hatch. Aye by proxy.
3 The Clerk. Ms. Snowe?
4 Senator Snowe. Aye.
5 The Clerk. Mr. Kyl?
6 Senator Hatch. Aye by proxy.
7 The Clerk. Mr. Crapo?
8 Senator Hatch. Aye by proxy.
9 The Clerk. Mr. Roberts?
10 Senator Hatch. Aye by proxy.
11 The Clerk. Mr. Enzi?
12 Senator Enzi. Aye.
13 The Clerk. Mr. Cornyn?
14 Senator Hatch. Aye by proxy.
15 The Clerk. Mr. Coburn?
16 Senator Coburn. Aye.
17 The Clerk. Mr. Thune?
18 Senator Thune. Aye.
19 The Clerk. Mr. Burr?
20 Senator Hatch. Aye by proxy.
21 The Clerk. Mr. Chairman?
22 The Chairman. No. The Clerk will tally the vote.
23 The Clerk. Mr. Chairman, the final tally is 11
24 ayes, 13 nays.
25 The Chairman. The nays have it. The amendment

1 fails.

2 Senator Nelson?

3 Senator Nelson. Mr. Chairman, this is Nelson
4 Amendment #2. I will withdraw this, but I want to bring
5 this to your attention. We tax shipping, ocean shipping
6 operations, in two separate ways. If you ship
7 domestically you are going to be subject to the corporate
8 income tax. But if you ship internationally you are
9 going to pay a tonnage tax and that is a lot less. So
10 this amendment is to mitigate some of the competitive
11 disadvantages that U.S. vessels face in the global
12 shipping markets.

13 As a result, U.S. vessels suffer this competitive
14 disadvantage which foreign vessels benefit from a less
15 costly regularly environment, lower capital and operating
16 costs, and negligible tax burdens.

17 So what this would do is allow U.S. flag vessels to
18 treat income earned while operating domestic routes as
19 fully taxable under the corporate income tax and to treat
20 the income earned while operating on international routes
21 as taxable under the tonnage tax regime. That is simply
22 what it is.

23 So, I will withdraw it, but we have got to address
24 it. This is particularly important to those of us that
25 have international shipping lines, particularly the two

1 Senators from Hawaii, California, Washington, and then
2 the eastern seaboard, as well as the Gulf.

3 The Chairman. Any further amendments?

4 Senator Menendez. Mr. Chairman?

5 The Chairman. Senator Menendez?

6 Senator Menendez. Mr. Chairman, I would like to
7 call up Menendez Amendment #1. It is the Sustainable
8 Water Infrastructure Act. Let me clarify the period of
9 time for the volume cap that we seek to be lifted for
10 water and waste water projects to be six years, which is
11 a period of time that the Joint Tax Committee has
12 estimated would ensure that this amendment is fully
13 offset.

14 I mentioned earlier articles that appear in our
15 hometown papers all the time about water main breaks
16 flooding businesses, shutting down highways, sewers,
17 overflowing, disrupting communities. These are systems
18 that are old and badly degraded. Many of them are
19 waiting to fail and they need to be fixed.

20 My amendment would create private sector jobs
21 rebuilding our Nation's crumbling water infrastructure by
22 removing issuances of private activity bonds for water
23 and waste water projects from the annual volume caps and
24 removing these projects would make the private activity
25 bond program far more effective in stimulating critically

1 needed financing of water and waste water projects across
2 the country.

3 Essentially this amendment would allow local
4 communities to leverage private capital markets in
5 combination with other financial mechanisms to finance
6 water and waste water infrastructure projects. This
7 makes sense for large-scale projects and that is why
8 private activity bonds used to finance airports, ports,
9 certain intercity rail projects, and solid waste projects
10 are already exempt from the annual caps.

11 This is a bipartisan and bicameral concept, a
12 private sector solution creating thousands of jobs to
13 address a pressing problem for communities across the
14 country. In fact, it was contained in both the
15 Chairman's extender package from last Congress and the
16 Thune alternative, so everyone in this committee is
17 already voted for this amendment, in essence. It is
18 fully paid for by a proposal that stands on its own
19 merits, a smart policy.

20 The offset would extend a provision of the Tax Code,
21 Section 420, that allows companies to transfer money from
22 over-funded pension funds to fund health insurance and
23 expand it to include life insurance as well. Section 420
24 was first enacted in 1990 by Senator Danforth to permit
25 excess pension plan assets to be transferred to pay for

1 retiree health benefits and has been extended three times
2 since it was originally enacted.

3 It has been extended with Republicans in charge and
4 Democrats in charge. It is good policy and deserves to
5 pass on its own merits. So, I hope, Mr. Chairman, and I
6 appreciate your help and the work of the staff to get us
7 to this point and I am looking forward to our colleagues
8 supporting the amendment.

9 The Chairman. Thank you, Senator.

10 All those in favor say aye.

11 [A Chorus of Ayes.]

12 The Chairman. Those opposed, no.

13 [A Chorus of Nays.]

14 The Chairman. The ayes have it. The amendment is
15 passed. The amendment is agreed to.

16 Further amendments? Senator Cardin?

17 Senator Cardin. Mr. Chairman, I have an amendment
18 that I intend to offer and then withdraw. I only have
19 one amendment, so it is Cardin Amendment 1, I guess. It
20 deals with the oil spill fund. As you know, the
21 underlying bill reduces the funds going into the oil
22 spill clean-up from 0.1 to 0.066 and reduces the surplus
23 in the account from \$3.7 billion to .7 billion.

24 I understand the importance of this amendment. I
25 support the Chairman's mark and the revenues that he

1 intends to receive from the lost provision. All across
2 America there are underground storage tanks that hold
3 petroleum.

4 For years these tanks were not regulated, and in
5 some cases not well maintained. The result was a problem
6 that hit every State in the Union. Leaking underground
7 storage tanks have polluted drinking water sources across
8 the country. Chemicals that leak into ground water
9 include benzene and other cancer-causing agents.

10 Here are some of the facts. Since 1986, 0.1 cents
11 of the Federal gasoline tax has gone to the Leaking
12 Underground Storage Tank Trust Fund. Our colleagues have
13 correctly noted that the trust fund has grown over the
14 years because the revenues have outpaced the use of the
15 funds every year.

16 I agree with them and I join with you, Mr. Chairman,
17 in supporting this proposal to transfer the extra funds
18 from the leaking storage tank program to the Highway
19 Trust Fund. The current excise tax has generated more
20 money than is needed but it is not going to continue
21 forever.

22 We still have 88,000 underground storage tanks in
23 America that are leaking and need to be fixed and closed.
24 As of last September in Wyoming there were 1,185 tanks
25 that are on the State's backlog. In Texas, the number is

1 1,879. In New Jersey, it is 3,919. In Florida, it is
2 13,507. So we have a huge backlog.

3 We are seeing new leaks every year. There are now
4 almost 6,000 new confirmed cases last year that also need
5 to be remedied. We have new fuels that are more
6 corrosive than traditional gasoline, so the number of new
7 cases is also expected to continue to grow.

8 Finally, Mr. Chairman, just as the shortfall in the
9 funding of the Highway Trust Fund is caused by the fact
10 that Americans are simply buying less gas, receipts for
11 the LUST trust funds are also dropping. A big backlog, a
12 growing need, and a shrinking revenue stream are the
13 facts.

14 So, Mr. Chairman, I would like to ask your help as
15 we look at a way to modify the proposal to keep the
16 revenues that you have in your mark but to make it more
17 predictable for the funds to be there in the future to
18 deal with the needs.

19 The amendment that I offered, we are having trouble
20 getting scored so I am going to withdraw the amendment.
21 But I would ask your help in continuing to look at ways
22 that we could modify this amendment to ensure that the
23 funds will be there to deal with the leaking underground
24 storage tanks.

25 The Chairman. Well, thank you, Senator. You have

1 that assurance.

2 Senator Carper. Mr. Chairman?

3 The Chairman. Senator?

4 Senator Carper. Mr. Chairman?

5 The Chairman. Senator Carper?

6 Senator Carper. Part of Delmarva here. The other
7 part of Delmarva. I just want to thank Senator Cardin
8 for raising this as a concern. He mentioned tens of
9 thousands of leaking underground storage tanks across the
10 country. Hundreds of them are in my State.

11 We are told by our Department of Natural Resource
12 and Environmental Control, which is tasked with helping
13 to clean them up, that we are not able to get the money
14 in our State to actually clean up the ones that are
15 there, to address the ones that are there. I would just
16 ask that you do what you said you would do and see if we
17 cannot get out of this in a way that is satisfactory for
18 all of us.

19 The Chairman. I agree with that. Thank you.

20 Senator Snowe?

21 Senator Snowe. Thank you, Mr. Chairman. I would
22 like to call up Snowe Amendment 2. I am not going to ask
23 for a vote, but I want to raise this issue because I do
24 think it is an important one. Given the historic
25 challenges that high energy prices are placing on family

1 budgets and to finally reduce the Federal tax on gasoline
2 and diesel fuel, I am pleased to say that the Highway
3 Users Association and the U.S. Coalition for Advanced
4 Diesel cars have also indicated support for this
5 amendment.

6 In data that was released last week the Department
7 of Commerce determined that last year Americans paid \$650
8 billion on energy, the most in our country's history.
9 This obviously represents a challenge to every American
10 and significantly burdens our economy and our economic
11 growth, and it certainly disproportionately undermines
12 the budgets of low-income and rural families. Last year,
13 the first time since 1949, the United States was a net
14 exporter of petroleum products, which includes gasoline
15 and diesel.

16 Specifically, in September the United States
17 exported 3.1 million barrels of petroleum every day.
18 While this represented an unprecedented shift in global
19 energy markets it raises tax implications for this
20 committee.

21 Quite simply, domestic oil refineries that export
22 oil products to foreign countries are completely exempt
23 from Federal excise taxes, and this has contributed to
24 the loss of Federal revenue in the highway trust fund.
25 While Americans are paying 18.4 cents for gasoline and

1 24.4 cents for each and every gallon of diesel fuel they
2 consume, Europeans consuming American fuels do not pay a
3 penny to the Federal Treasury.

4 Make no mistake, the growth of oil production in
5 North America is a major positive development. Oil
6 production rose as much as 5 percent last year, and this
7 is obviously improving America's energy security. Yet,
8 irrespective of whether a refinery ultimately ships the
9 gasoline overseas or ends up in American cars, should not
10 all refineries pay the same Federal tax on gasoline?

11 Currently, the Federal tax policy actually creates
12 an incentive to ship oil overseas. In light of the major
13 shift towards oil exports we must correct this egregious
14 policy and apply a simple 18 cent-per-gallon tax on all
15 gasoline and diesel produced from domestic refineries
16 without respect to whether the product is ultimately
17 consumed on an American road or European road.

18 We currently apply an 8 cent-per-barrel tax on all
19 crude oil received at a domestic refinery, irrespective
20 of whether the product is exported or consumed
21 domestically to fund the Oil Spill Liability Trust Fund.

22 So by applying a Federal straightforward excise tax on
23 all diesel fuel and gasoline produced in domestic
24 refineries, not just the fuel American s use in the
25 highway transportation, we capture additional product,

1 raise additional revenue, and can utilize those proceeds
2 to actually lower the tax Americans pay on gasoline and
3 diesel.

4 That is why I would provide and recommend in this
5 amendment to pay 18 cents for both either gasoline per
6 gallon or diesel fuel, and that gives a break to
7 Americans and to obviously truckers, it helps our
8 economy, it helps Americans at a time when we are seeing
9 skyrocketing increases in gasoline, at a very difficult
10 moment in people's lives because of the economy, because
11 of the loss of jobs, and because of the inability frankly
12 to accommodate these price increases.

13 I am talking, my constituents in Maine, they travel
14 distances for work and it is becoming infinitely harder.

15 I am not going to call for a vote on this amendment. I
16 would like to pursue it further because I do think it has
17 merit so that we treat all oil, whether it is gasoline
18 and diesel fuel, whether it is consumed here in the
19 United States or exported, all should have the same tax.

20 There should not be any distinction.

21 According to the Congressional Research Service,
22 just for this gasoline this would increase revenues by
23 roughly \$1.47 billion annually for the additional
24 gasoline taxes that are paid on the exports and then we
25 could provide this tax break to Americans. I think it is

1 something that should be considered.

2 I think it would be a modest reduction in gasoline
3 taxes and diesel fuel taxes, but it would be a great, I
4 think, hit for people who are struggling in this very
5 challenging economic environment.

6 Also, I think it provides equity, Mr. Chairman. It
7 certainly is something that is constructed and does not
8 discriminate against the export of petroleum. It simply
9 provides parity for the current excise tax imposed on all
10 Americans.

11 So it is not making a distinction on the product
12 that is being exported. In fact, it is treating it
13 similarly to the product that is consumed here in the
14 United States and is taxed.

15 The Chairman. Thank you, Senator. I think you
16 make very good points. I think it is obviously something
17 that should be taken up fairly quickly. I do not know
18 when, tax reform or something, but it is a very good
19 point.

20 Senator Snowe. Thank you, Mr. Chairman.

21 The Chairman. Do you have a second amendment?

22 Senator Snowe. No.

23 The Chairman. All right.

24 Senator Bingaman?

25 Senator Bingaman. Mr. Chairman, could I just

1 briefly say that, again, thank you for including a
2 provision related to the bank qualified bonds. Between
3 now and the time you get to the floor with this bill I
4 would like to explore further with the staff if there is
5 some way that we could delay for 6, or 8, or 10 weeks the
6 beginning of this period during which the higher amount
7 of bonds could be issued and then extended into 2013, an
8 additional equal period.

9 I am concerned that small communities need a little
10 bit of time to gear up to do these bond issues and take
11 advantage of this provision and if we do not accommodate
12 that we will not get near as much benefit from this as is
13 possible. So I will continue to talk to you and staff
14 about that and see if there is any way to modify this.

15 The Chairman. Yes. I will certainly look into it,
16 Senator. From my experience, I have learned a lot of
17 smaller communities need that time and often just do not
18 know about the availability of bonding provisions enacted
19 by the Congress. That is a very good point, to make sure
20 they can gear up.

21 Senator Bingaman. Yes. I would hate to have a
22 provision passed and become law immediately and then by
23 the time communities learn about it it is already expired
24 again.

25 The Chairman. Right.

1 Senator Bingaman. That would not be in anyone's
2 interest.

3 The Chairman. Good point.

4 I understand Senator Thune has an amendment.
5 Senator Thune?

6 Senator Thune. Yes, sir, Mr. Chairman. This is an
7 amendment which, if you decide to accept it, I think can
8 get some Republican votes for the bill. But the bill
9 that we are considering today --

10 The Chairman. You mean, I am not going to get
11 Republican votes for the bill?

12 Senator Thune. Well, this would help. Is a
13 surface transportation bill. It is about funding
14 transportation infrastructure, not about extending
15 recently expired provisions. So what this amendment does
16 is it strikes three items that were included in the
17 Chairman's modification that I believe ought to be
18 considered as part of a tax extenders package. Those
19 items are the employer-provided mass transit exclusion,
20 the bank qualified bonds provision, and the AMT relief
21 for private activity bonds.

22 If this is going to be a tax extenders bill then let
23 us include them all, including some of them that many of
24 us support which have been discussed earlier, the
25 biodiesel credit which has expired. In fact, there are

1 60 extender items expired at the end of 2011 and 41
2 extender items that expire at the end of this year. But
3 to pick out a few provisions for special treatment and
4 leave all the others to languish is wrong. It is bad
5 policy and it is bad process.

6 So there are lots of extender items that if we put
7 them in front of this committee would probably pass with
8 broad bipartisan support, and I hope at some point we
9 will, that this committee will look at a tax extenders
10 package. But now is not the time to pick out a few items
11 that are only loosely related to transportation and give
12 them special treatment.

13 I think it is important that we keep the focus of
14 this narrow issue, on improving the highway bill by
15 focusing on the Highway Trust Fund solvency. By the way,
16 this amendment would reduce the cost of the bill before
17 us by about \$710 million, so I would urge the adoption of
18 the amendment.

19 The Chairman. I might say to my good friend from
20 South Dakota, there is an opportunity for the Senator to
21 work very aggressively to help with the payroll tax bill
22 so we can include extenders in there and get some of
23 these provisions that mean so much to the Senator
24 actually extended. That is the opportunity to get those
25 provisions enacted.

1 All in favor of the amendment say aye.

2 Senator Thune. Mr. Chairman, I would, on this,
3 like to get a roll call vote.

4 The Chairman. A roll call has been requested.
5 The Clerk will call the roll.

6 The Clerk. Mr. Rockefeller?

7 Senator Rockefeller. No.

8 The Clerk. Mr. Conrad?

9 The Chairman. No by proxy.

10 The Clerk. Mr. Bingaman?

11 Senator Bingaman. No.

12 The Clerk. Mr. Kerry?

13 The Chairman. No by proxy.

14 The Clerk. Mr. Wyden?

15 Senator Wyden. No.

16 The Clerk. Mr. Schumer?

17 Senator Schumer. No.

18 The Clerk. Ms. Stabenow?

19 Senator Stabenow. No.

20 The Clerk. Ms. Cantwell?

21 Senator Cantwell. No.

22 The Clerk. Mr. Nelson?

23 Senator Nelson. No.

24 The Clerk. Mr. Menendez?

25 Senator Menendez. No.

1 The Clerk. Mr. Carper?
2 Senator Carper. No.
3 The Clerk. Mr. Cardin?
4 Senator Cardin. No.
5 The Clerk. Mr. Hatch?
6 Senator Hatch. Aye.
7 The Clerk. Mr. Grassley?
8 Senator Hatch. Aye by proxy.
9 The Clerk. Ms. Snowe?
10 Senator Snowe. Aye.
11 The Clerk. Mr. Kyl?
12 Senator Hatch. Aye by proxy.
13 The Clerk. Mr. Crapo?
14 Senator Hatch. Aye by proxy.
15 The Clerk. Mr. Roberts?
16 Senator Hatch. Aye by proxy.
17 The Clerk. Mr. Enzi?
18 Senator Enzi. Aye.
19 The Clerk. Mr. Cornyn?
20 Senator Hatch. Aye by proxy.
21 The Clerk. Mr. Coburn?
22 Senator Hatch. Aye by proxy.
23 The Clerk. Mr. Thune?
24 Senator Thune. Aye.
25 The Clerk. Mr. Burr?

1 Senator Hatch. Aye by proxy.

2 The Clerk. Mr. Chairman?

3 The Chairman. No. The Clerk will announce the
4 vote.

5 The Clerk. Mr. Chairman, the final tally is 11
6 ayes, 13 nays.

7 The Chairman. The nays have it. The amendment
8 fails.

9 Any further debate on the bill?

10 [No response.]

11 The Chairman. If there is no further debate I
12 would entertain a motion that the committee order the
13 bill reported.

14 Senator Schumer. So moved.

15 The Chairman. So moved.

16 All those in favor say aye.

17 [A Chorus of Ayes.]

18 The Chairman. Those opposed, no.

19 [A Chorus of Nays.]

20 The Chairman. A recorded vote has been requested.

21 The Clerk will call the roll.

22 The Clerk. Mr. Rockefeller?

23 Senator Rockefeller. Aye.

24 The Clerk. Mr. Conrad?

25 The Chairman. Aye by proxy.

1 The Clerk. Mr. Bingaman?
2 Senator Bingaman. Aye.
3 The Clerk. Mr. Kerry?
4 The Chairman. Aye by proxy.
5 The Clerk. Mr. Wyden?
6 Senator Wyden. Aye.
7 The Clerk. Mr. Schumer?
8 Senator Schumer. Aye.
9 The Clerk. Ms. Stabenow?
10 Senator Stabenow. Aye.
11 The Clerk. Ms. Cantwell?
12 Senator Cantwell. Aye.
13 The Clerk. Mr. Nelson?
14 Senator Nelson. Aye.
15 The Clerk. Mr. Menendez?
16 Senator Menendez. Aye.
17 The Clerk. Mr. Carper?
18 Senator Carper. Aye.
19 The Clerk. Mr. Cardin?
20 Senator Cardin. Aye.
21 The Clerk. Mr. Hatch?
22 Senator Hatch. No.
23 The Clerk. Mr. Grassley?
24 Senator Hatch. No by proxy.
25 The Clerk. Ms. Snowe?

1 Senator Snowe. Aye.
2 The Clerk. Mr. Kyl?
3 Senator Hatch. Present by proxy.
4 The Clerk. Mr. Crapo?
5 Senator Hatch. Aye by proxy.
6 The Clerk. Mr. Roberts?
7 Senator Hatch. Aye by proxy.
8 The Clerk. Mr. Enzi?
9 Senator Enzi. No.
10 The Clerk. Mr. Cornyn?
11 Senator Hatch. No by proxy.
12 The Clerk. Mr. Coburn?
13 Senator Hatch. No by proxy.
14 The Clerk. Mr. Thune?
15 Senator Thune. Aye.
16 The Clerk. Mr. Burr?
17 Senator Hatch. No by proxy.
18 The Clerk. Mr. Chairman?
19 The Chairman. Aye. The Clerk will announce the
20 vote.
21 The Clerk. Mr. Chairman, the tally of the members
22 present is 13 ayes and 3 nays. The final tally,
23 including proxies, is 17 ayes, 6 nays, and 1 present.
24 The Chairman. The ayes have it. The resolution is
25 ordered reported.

1 Before I go any further I would just like to, first,
2 thank the staff. You have sat there a long time. It is
3 above and beyond the call of duty. Just, thank you very
4 much. And second, you have put so much effort into this
5 bill in so many ways. It is a lot of work. You do not
6 get your name in the headlines, but thanks very much for
7 all that you have done.

8 Second, I just want to note that this is an honest-
9 to-goodness mark-up. We do not do enough of those, and
10 it is my intention to have many more. I will even grab
11 some M&Ms for the Senator from New York.

12 I ask consent that staff be granted authority to
13 make technical, conforming, and budgetary changes.

14 [No response.]

15 The Chairman. Without objection, it is so ordered.

16 I thank all the Senators. The committee is
17 adjourned.

18 [Whereupon, at 6:41 p.m., the meeting was
19 concluded.]

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