

1 EXECUTIVE COMMITTEE MEETING ON (1) PURSUANT TO A  
2 UNANIMOUS CONSENT AGREEMENT ON OCTOBER 1, 2003, THE  
3 COMMITTEE WILL RECONSIDER A CHAIRMAN'S MARK ENTITLED,  
4 NATIONAL EMPLOYEE SAVINGS AND TRUST EQUITY GUARANTEE ACT.  
5 THIS BILL IS OPEN FOR AMENDMENT ONLY WITH RESPECT TO THE  
6 CORPORATE OWNED LIFE INSURANCE AND OTHER RELATED  
7 PROVISIONS; (2) A CHAIRMAN'S MARK ENTITLED, HIGHWAY  
8 REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION ACT OF  
9 2004; AND (3) S. 882, THE TAX ADMINISTRATION GOOD  
10 GOVERNMENT ACT OF 2004

11

12 MONDAY, FEBRUARY 2, 2004

13 U.S. Senate,

14 Committee on Finance,

15 Washington, DC.

16 The meeting was convened, pursuant to notice, at  
17 2:05 p.m., in room SD-215, Dirksen Senate Office  
18 Building, Hon. Charles E. Grassley (chairman of the  
19 committee) presiding.

20 Present: Senators Hatch, Nickles, Lott, Snowe, Kyl,  
21 Thomas, Santorum, Smith, Bunning, Baucus, Breaux, Conrad,  
22 Graham, Jeffords, Bingaman, and Lincoln.

23 Also present: Kolan Davis, Republican Staff Director  
24 and Chief Counsel; Russ Sullivan, Democratic Staff  
25 Director.

26 Also present: Gregory Jenner, Deputy Assistant

1 Secretary for Tax Policy, Treasury Department; George  
2 Yin, Chief of Staff, Joint Committee on Taxation; Mark  
3 Prater, Republican Chief Tax Counsel; Pat Heck,  
4 Democratic Chief Tax Counsel; Christy Mistr, Elizabeth  
5 Paris, Judy Miller, Diann Howland, Dawn Levy, Tax  
6 Counsels, and Carla Martin, Chief Clerk.

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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.  
2 SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

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4 Senator Grassley. I will call the meeting to order.

5 We have seven members present, which is the number to  
6 do business, the number to vote a bill out, a quorum.

7 So, we will proceed, because we have a very busy agenda.

8 This is a continuation of how busy we were last year,  
9 and some of the things on today's agenda are a carry-over  
10 from last year. I do not think things are going to be  
11 much different during this year. We have a lot on our  
12 plate.

13 So, I am going to ask members' cooperation, hopefully  
14 helping us move these three pieces of legislation through  
15 expeditiously. Everyone, of course, is entitled to his  
16 or her points, and I think it is very good that we all  
17 make our points. But I hope that people can keep their  
18 discussion relatively short.

19 As a first step towards that goal, I am going to put  
20 my statement in the record, and I would hope that others  
21 would do that as well.

22 [The prepared statement of Senator Grassley appears  
23 in the appendix.]

24 The Chairman. Then I would be very glad to welcome  
25 back Senator Baucus, who has been absent for health

1 reasons, but still participated very much in meetings we  
2 had last week preparing for this, and other meetings.  
3 So, I am glad you are with us, and I turn to you, now.  
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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM  
2 MONTANA

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4 Senator Baucus. Thank you very much, Mr. Chairman.  
5 Thank you, Mr. Chairman.

6 It is always a great pleasure to work with you, with  
7 your teamwork and cooperation in working together.  
8 Frankly, I wish there were more of that in the entire  
9 Senate. But you set a very good precedent. You are a  
10 good role model, and I thank you very much for your  
11 kindness and consideration.

12 It is true, we do have three bills before us today.  
13 They are pretty complex, but they have been worked on  
14 aggressively by staff, the Highway Financing Bill, and  
15 tax administration provisions, as well as corporate owned  
16 life insurance.

17 I have a long statement, somewhat long, which I will  
18 ask be submitted for the record. I would encourage us to  
19 keep moving and work on this legislation. You are right  
20 that we have a lot to do today. So, I urge us to get  
21 started.

22 [The prepared statement of Senator Baucus appears in  
23 the appendix.]

24 The Chairman. Is it all right with other members if  
25 I proceed?

1 [No response]

2 The Chairman. Then I would turn to our agenda. By  
3 unanimous consent agreement of October 1, last year, I  
4 would call up the Chairman's mark, an original bill  
5 entitled, "The National Employee Savings and Trust Equity  
6 Act."

7 This legislation was originally ordered to be  
8 reported last fall. The legislation included Senator  
9 Bingaman's corporate owned life insurance, or for short,  
10 the COLI, amendment.

11 Members agreed to revisit the legislation with  
12 respect to Senator Bingaman's amendment. Finance staff  
13 circulated a discussion draft substitute for Senator  
14 Bingaman's amendment.

15 The Chairman's modification largely reflects the  
16 staff discussion draft. Finance Committee staff also  
17 recommended that several effective dates in the  
18 underlying bill be modified.

19 Since the Finance Committee has already considered  
20 this legislation, we will forego having the usual staff  
21 walk-through.

22 I note that the staff before us includes Diann  
23 Howland and Judy Miller of the Finance Committee, George  
24 Yin, Chief of Staff of the Joint Committee, and Gregory  
25 Jenner, the Deputy Assistant Secretary for Tax Policy of

1 the Treasury Department. We thank all of you for your  
2 participation.

3 I would ask Mr. Yin if he would make some comments on  
4 the modification of the Chairman's mark.

5 Mr. Yin. Thank you, Mr. Chairman.

6 The modification to the mark has several items. One,  
7 is it would modify the COLI provision to provide that the  
8 notice that is provided to employees includes the maximum  
9 face amount of insurance that the employer takes out on  
10 the life of the employee.

11 In addition to that, the modification does contain a  
12 range of effective date changes, essentially to move up  
13 most items one year to reflect the change in time from  
14 the original approval of this bill. The modification  
15 also deletes the Section 809 and 815 provisions and the  
16 life/non-life consolidated provisions.

17 Then, finally, the modification includes a reporting  
18 item for taxable mergers and acquisitions that are  
19 carried out not through cash acquisitions.

20 The Chairman. All right. Are there any questions  
21 of any member?

22 Senator Bunning. Yes. Mr. Chairman, I would like  
23 to know, what is the effective date going to be? I  
24 misunderstood what you said.

25 Mr. Yin. I am sorry, Senator Bunning. The

1 effective date of a number of the provisions that were  
2 originally agreed to by the committee last fall have been  
3 modified, in most cases, to reflect the fact that we  
4 moved up the effective dates roughly one year from the  
5 time of the approval.

6 Senator Bunning. What date is that?

7 Mr. Yin. Well, it varies from provision to  
8 provision. The general date would be December 31, 2004,  
9 but you would have to look at the specific provision to  
10 see the effective date.

11 Senator Bunning. All right. Thank you.

12 The Chairman. Senator Breaux?

13 Senator Breaux. I would just like to understand,  
14 maybe, where we are. Under the proposal, we will still  
15 be able to have life insurance policies taken out by the  
16 employer on highly compensated employees. Is that  
17 correct?

18 Mr. Yin. That is correct, Senator Breaux.

19 Senator Breaux. Then the proceeds that the company  
20 would get upon the death of that employee would not be  
21 counted as income to the employer or company?

22 Mr. Yin. That is correct, if the employee is highly  
23 compensated, which is defined under the bill as the top  
24 35 percent compensated employees. There are several  
25 other exceptions.



1           Senator Breaux.    Is the difference under this  
2 proposal now that the employer must notify the employee  
3 if they take out the life insurance policy on the  
4 employee?

5           Mr. Yin.    I would say that is the principal  
6 difference of this proposal.

7           Senator Breaux.    Are there any restrictions on what  
8 the proceeds can be used by the employer for?

9           Mr. Yin.    No, there are no restrictions.

10          Senator Breaux.    So they employer or company, upon  
11 receipt of the benefits from the life insurance policy,  
12 could use it for buying more widgets for the plant, they  
13 could use it for health benefits for their employees,  
14 they could use it to give the board of directors a salary  
15 increase? All of those would be eligible?

16          Mr. Yin.    That would be my understanding, Senator.

17          Senator Breaux.    They could use it to give salary  
18 increases for only one segment of the company and not  
19 others?

20          Mr. Yin.    The legislation does not impose any  
21 restrictions on the use.

22          Senator Breaux.    Mr. Chairman, if the whole concept  
23 is bad, the fact that the proposal now requires  
24 notification of the employee that we are buying a policy  
25 on their life, does not make the policy right.

1           If we are going to give a company an exclusion from  
2 income for benefits that they get upon the death of that  
3 employee, I was hoping we could have reached agreement  
4 that, if public policy is going to grant that tax  
5 benefit, that it be used for legitimate, good public  
6 policy. One of them would be to buy health benefits for  
7 the employees, one would be if they are going to buy  
8 something that helps the company growth, perhaps.

9           But to have no restrictions at all on what they can  
10 do with it, when you have an accompanying tax policy or  
11 tax benefit that is going to cost everybody else money,  
12 to me, I do not know that the fact that we are now  
13 notifying the employee that we are doing this on his life  
14 makes that policy any better. That is my concern.

15           The Chairman.    Senator Breaux, just a partial  
16 response, and not a complete response to your question.  
17 But we did, if you remember from the hearing that we had  
18 after the Bingaman amendment was brought up and we  
19 promised a hearing and we had that hearing, was that the  
20 direct tie or direct relationship to this and the benefit  
21 that comes from it through the corporation was very  
22 difficult to tie in. That is why we accepted some  
23 modification without the direct tie-in that I think you  
24 are arguing for.

25           Senator Breaux.    Would the Chairman agree that the

1       only modification is that we now have to tell the  
2       employee that we are buying a policy on their life? They  
3       are in no way restricted as to what they can do with the  
4       income benefits they get. The only thing we have done is  
5       to say the employer now has to tell the employee that we  
6       are buying a life insurance policy.

7               There is no restriction whatsoever on what that  
8       income, which is tax-free, can be utilized for. It  
9       should be utilized for something that is in the public  
10      interest. Maybe just giving a couple of people a salary  
11      increase may not be in the public interest that justifies  
12      a tax benefit.

13             The Chairman. I would describe your response as  
14      accurate, and only say that we did modify it so that it  
15      would only include white collar employees to try to tie  
16      it down and narrow it down as much as we could.

17             Senator Baucus. Mr. Chairman?

18             The Chairman. Yes?

19             Senator Baucus. If I might also add in here, this  
20      is not an easy issue by any stretch of the imagination.  
21      I think, all things being equal, it would be preferable  
22      that this tax benefit somehow be used for maybe health  
23      insurance for employees, or whatnot.

24             The problem is, money is fungible. Even if we were  
25      to make that requirement, it would not have a heck of an

1 effect because companies that might otherwise be using  
2 some funds for health insurance benefits anyway, because  
3 money is fungible, they would be using it for some of the  
4 purposes that you had mentioned.

5 In addition, as far as I can recall, the Tax Code  
6 does not require a deduction or a credit very often to be  
7 used for a certain purpose, because money is fungible.  
8 We are starting to get into, I think, a fairly  
9 proscriptive, detailed use of the Tax Code if we were  
10 just to go down this road of saying, you have to use a  
11 certain deduction for this benefit, for this purpose, and  
12 the deduction for that, and so on, and so forth.

13 Now, having said all that, I deeply appreciate what  
14 the Senator is saying. I said at the outset, this is not  
15 easy. This is very difficult. I guess, like often in  
16 life, sometimes the glass is more full than empty. This  
17 bill is making progress.

18 We often talk about not letting perfection be the  
19 enemy of the good, and there are a lot of good  
20 provisions, I think, in this bill, insofar as various  
21 parts have been worked out together and I think it is an  
22 advance. But I certainly appreciate the Senator's  
23 concerns.

24 The Chairman. Three Senators have asked for the  
25 floor, so we will do it in this order: Senator Bingaman,

1 Senator Bunning, and Senator Thomas.

2 But, in the meantime, we generally defer to the  
3 leaders, if they have anything they have to say, because  
4 they have time constraints.

5 Senator Daschle. That is very kind, Mr. Chairman.  
6 I have no comments at this time.

7 The Chairman. All right.

8 Senator Bingaman?

9 Senator Bingaman. Thank you, Mr. Chairman.

10 Let me just ask about the budgetary impact. When I  
11 first filed the amendment that I filed, it essentially  
12 said that a corporate could not get a tax-free pay-out if  
13 the employee who died had not worked for the company  
14 within the last year, or was not working for the company  
15 at the time the employee died.

16 The estimate I heard at that time is that that would  
17 raise about \$5.5 billion over 10 years. Is that  
18 accurate?

19 Mr. Yin. That is correct, Senator.

20 Senator Bingaman. Then there was great concern  
21 because some of that was retroactive and it was applying  
22 to policies already in effect, so we modified, or agreed  
23 to a change. I agreed to change. That reduced the  
24 amount that would be raised in revenue down to \$1.2  
25 billion over five years. Is that also accurate?

1           Mr. Yin.    That is correct, but there were other  
2 changes that were made.

3           Senator Bingaman.    Right.  There were other changes  
4 limiting the number of people.  I think we are down to 20  
5 people, did we not say?

6           Mr. Yin.    That is correct, sir.

7           Senator Bingaman.    Twenty people.

8           Then Senator Conrad filed an amendment that was  
9 estimated, as I understand it, by the Tax Committee at  
10 raising roughly \$100 million rather than \$1.2 billion.  
11 Am I right about that?

12          Mr. Yin.    That is correct.  There was an amendment  
13 that we estimated as raising about \$165 million.

14          Senator Bingaman.    One hundred and sixty-five.  And  
15 my understanding is that the Chairman's modification that  
16 we are now talking about gets us back to zero.

17          Mr. Yin.    We do estimate it will have a negligible  
18 revenue impact.

19          Senator Bingaman.    So Senator Breaux's concern that  
20 this does nothing in terms of discouraging the use of  
21 these policies, or restricting the use of them in any  
22 way, is essentially borne out by that estimate, as I  
23 understand.

24          Mr. Yin.    We would estimate that, because of the  
25 number of people that would be excepted from this

1 proposal, that it would have a negligible revenue impact.

2 Senator Bingaman. That is the 35 percent. The top  
3 35 percent of all employees by wage, or by salary.

4 Mr. Yin. That is correct, Senator.

5 Senator Bingaman. Mr. Chairman, those were the  
6 questions I had. I did have some amendments I wanted to  
7 offer and a statement to make when we get to that part.

8 The Chairman. We are, hopefully, just about there.

9 Senator Bunning, then Senator Thomas. Now, we do  
10 have a quorum. I like to always wait until we get done  
11 with all of the amendments before we go to final passage.  
12 I hope people can stay around, because I think we have  
13 discussed this quite a bit already and we will be able to  
14 get to it.

15 Senator Bingaman. I will defer if you want to.

16 The Chairman. No. I do not think I should until we  
17 know that we might lose a quorum.

18 Senator Bunning. Well, my question goes to  
19 whether, in the new mark-up, the employee has an option  
20 to not accept or to accept any type of insurance that the  
21 corporation might want to have on that person, and/or can  
22 that employee determine the beneficiary of that life  
23 insurance program that they may or may not want to  
24 accept?

25 The Chairman. Ms. Howland, would you respond to

1 that, please?

2 Ms. Howland. The employee signs a consent form  
3 about whether or not they want to have the policy.

4 Senator Bunning. And if the employee does not sign  
5 the consent form?

6 Ms. Howland. It would not qualify under the rules  
7 that we have for the draft.

8 Senator Bunning. In other words, you are telling  
9 me, under the current mark-up that we have before us,  
10 that an employee can opt out of being covered under COLI?

11 Ms. Howland. That is correct.

12 Senator Bunning. Thank you.

13 The Chairman. Senator Thomas?

14 Senator Thomas. My question is very simple, in  
15 talking about the tax part. Are these premiums paid  
16 before taxes or after taxes by the company?

17 Mr. Yin. The premiums are not deductible, Senator  
18 Thomas.

19 Senator Thomas. Thank you.

20 The Chairman. At this point I would move the  
21 Chairman's mark. Hopefully, without objection, the  
22 Chairman's mark is modified.

23 Senator Bingaman. Mr. Chairman, I would want the  
24 record to reflect that I voted against the Chairman's  
25 mark.



1           The Chairman.   All right.   Have the record show that  
2   Senator Bingaman has voted "no" against the Chairman's  
3   mark.

4           Now we would turn to four amendments that have been  
5   filed.   We have included one in the modification.   My  
6   understanding is that Senator Bingaman wants to offer  
7   amendments.   I think we start with you, Senator Bingaman.  
8   Under the rules, you are the only one that can offer  
9   amendments.

10          Senator Bingaman.   Mr. Chairman, I think, first, you  
11   have incorporated in your modification that was just  
12   adopted the amendment that Senator Conrad co-sponsored  
13   with me, as I understand it.   Is that right?

14          The Chairman.   Yes.

15          Senator Bingaman.   All right.

16          Bingaman Amendment Number 2 is an amendment that  
17   would require employers to include in their annual report  
18   that they make to the IRS a breakdown of the size of the  
19   policies taken out on the lives of employees.   That is  
20   one which I have been informed is possibly acceptable to  
21   you.   Is that accurate?

22          The Chairman.   Let me check with my staff.   Reading  
23   your amendment, the answer to your question is yes.

24          Senator Bingaman.   Thank you, Mr. Chairman.

25          Senator Nickles.   Mr. Chairman, before you adopt

1 that amendment, is that --

2 The Chairman. Well, let me ask. Senator Bingaman,  
3 do you yield the floor?

4 Senator Bingaman. Yes, I am glad to yield.

5 The Chairman. Senator Nickles.

6 Senator Nickles. Mr. Chairman, I am just trying to  
7 figure out what that amendment is. So in the annual  
8 report, they would have to have a breakdown on each plan,  
9 or would it be more generic, like this class of employees  
10 would have plans equal to salary, or you mention the  
11 employee by amount, or how specific?

12 Senator Bingaman. No. There is not going to be any  
13 disclosure of which policy relates to which employee.  
14 Really, there is no requirement that they give the  
15 precise number.

16 Senator Nickles. All right. That is all I wanted  
17 to know. I did not know if you were going to identify  
18 the employee or not.

19 Senator Bingaman. The idea is, we would like to  
20 know whether they are taking about \$5 million policies on  
21 their top people or whether they are taking out \$50,000  
22 policies on everyone that they are eligible to.

23 Senator Nickles. So they do it by class like that,  
24 and maybe by aggregate amounts, but not individual.

25 Senator Bingaman. That would be my intent, yes.

1 Senator Nickles. I understand.

2 Senator Baucus. If I might, Mr. Chairman. This, to  
3 me so far, seems pretty vague. That is, I do not know  
4 what the classes are. I do not know what is intended  
5 here. I do not know what the groups are.

6 An employer is going to wonder the same. One  
7 employer says it is this, another employer says it is  
8 that. I understand the intent, but it just seems pretty  
9 vague here and I could see it could cause a lot of  
10 problems. I am just concerned about the vagueness here.

11 Senator Bingaman. Well, Mr. Chairman, what this is  
12 an effort to respond to is the difficulty that GAO has  
13 had in getting any information about these policies.  
14 They have tried and we have directed them to do a study  
15 of the extent of the use of this COLI policy. They have  
16 come back and said they cannot get the information from  
17 the companies.

18 Now, this is an effort that would require companies  
19 to give us some useful information. The way the  
20 amendment now reads, it says they shall provide each year  
21 the number of policies that they have written on  
22 employees and the total, aggregate amount of insurance  
23 that they have in place of this type.

24 But there is no indication, as I say, as to whether  
25 it is \$5 million policies, \$50,000 policies, and I

1 thought some definition of that would be useful.

2 Senator Conrad. Mr. Chairman?

3 The Chairman. Senator Conrad?

4 Senator Conrad. Might I inquire of Mr. Jenner,  
5 would this amendment assist you in any way in  
6 administering the tax law?

7 Mr. Jenner. Senator, the information would probably  
8 not help us in any sort of audits or anything like that.  
9 It would be a recordkeeping and data compilation, but  
10 nothing more in terms of enforcement or compliance.

11 Senator Conrad. Well, Mr. Chairman and members of  
12 the committee, it would seem to me that this amendment is  
13 vague and it does not assist the IRS in administering the  
14 law. I wonder if that is really a useful exercise. I  
15 just raise the question.

16 If the IRS is telling us it does not help them  
17 administer the law, it does not help us with the audit  
18 trail--and we have put in reporting requirements in this  
19 legislation to help the Revenue Service with an audit  
20 trail--it seems to me to be superfluous.

21 Senator Nickles. Can we use that same standard on  
22 FSC ETI? [Laughter].

23 Senator Conrad. No.

24 The Chairman. Well, I think that there may be some  
25 vagueness, but I hope that the committee would adopt the

1 amendment. If there are some problems with it, I think  
2 we could look at those on the floor.

3 Those in favor of the amendment, say aye.

4 [A chorus of ayes]

5 The Chairman. Those opposed, say no.

6 [A chorus of nays]

7 The Chairman. In the opinion of the Chair, the  
8 Chair is confused. [Laughter]. So, I would ask for a  
9 show of hands.

10 Those in favor of the amendment, vote aye.

11 [A showing of hands]

12 The Chairman. Those opposed to the amendment?

13 [A showing of hands]

14 The Chairman. By a vote of 7 to 8, the amendment is  
15 defeated.

16 Would the Senator proceed?

17 Senator Bingaman. Mr. Chairman, let me ask to go to  
18 Bingaman Amendment Number 3. I think there has been a  
19 modification of this. Let me ask staff if they would  
20 discuss the modification that we talked about on Bingaman  
21 Amendment Number 3 to essentially require that this  
22 notice that is given to each employee, that the report  
23 that is filed contains some additional information, is my  
24 understanding.

25 Are you familiar with this? Diann, are you familiar

1 with the modification?

2 Ms. Howland. I am. I believe that the suggested  
3 change was that, in the annual report, the employer would  
4 affirm that they had valid consents from the employees,  
5 or if they did not, the number of employees who had not  
6 provided a consent for whom they had taken out COLI  
7 policies on those individuals' lives.

8 Senator Bingaman. Right.

9 Mr. Chairman, again, I think this would assist in  
10 having decent information. The problem with not doing  
11 this is that IRS is really not going to know anything  
12 about this whole area, except as we require it, until  
13 employees die, which may be 10 years after they leave  
14 employment, maybe 20 years after they leave employment.  
15 This would provide some small, additional information.

16 Senator Conrad. Can we be clear what amendment we  
17 are talking about now? Is this the modified?

18 Senator Bingaman. This is modified Bingaman Number  
19 3. And I do not have a sheet of paper to give to you on  
20 it.

21 Senator Baucus. I have one.

22 Senator Bingaman. No, that is not the same. That  
23 one, I am going to discuss next, the one you have got in  
24 your hand.

25 Diann, could you repeat again your understanding of

1 what we have discussed on this Bingaman Amendment 3?

2 Ms. Howland. My understanding is that, in their  
3 annual reports on COLI, that employers would affirm that  
4 they had valid consent forms from the employees whose  
5 lives were covered, or if they did not, the numbers of  
6 individuals on whom they had COLI policies who had not  
7 consented. I hope that is correct.

8 Senator Baucus. Could you state that again, please?

9 Ms. Howland. That the employer, in their annual  
10 reports to the IRS on COLI, would affirm that they had  
11 valid consents from the employees whose lives were  
12 covered, or if they did not have consents, the number of  
13 individuals on whom they did not have consent forms.

14 Senator Bingaman. Essentially, it would be advising  
15 the IRS as to which of these various policies the  
16 employer is in a position to claim tax-free pay-outs on,  
17 because that is essentially what we are setting up here.  
18 If you have got the consent form, you get a tax-free pay-  
19 out of the proceeds. If you do not have the consent  
20 form, you do not.

21 Senator Conrad. Mr. Chairman? Mr. Chairman? Might  
22 I inquire of the representative of the Internal Revenue  
23 Service, again, does this help you administer the law?

24 Mr. Jenner. Senator, this would be a helpful  
25 amendment. We think that having that data would allow

1 auditors to look into COLI policies.

2 Senator Nickles. That was not the answer he was  
3 looking for. [Laughter].

4 Senator Conrad. No. I was looking for an honest  
5 answer and I think I got it.

6 The Chairman. With this discussion, without  
7 objection, the amendment is adopted.

8 [No response]

9 The Chairman. All right. Without objection, the  
10 amendment is adopted.

11 Would you proceed to your next amendment, Senator  
12 Bingaman?

13 Senator Bingaman. Yes. Mr. Chairman, this is the  
14 one we discussed right before the meeting. This is  
15 listed here on our list as Bingaman Number 1. It is an  
16 effort to put in place some minimal protections for  
17 employees against adverse actions being taken because of  
18 the employee's decision not to allow the policy to be  
19 taken out. This would require a toll-free number for the  
20 IRS to be displayed on the notice form.

21 It would provide that if the IRS determines that a  
22 form is not voluntary and that there was coercion  
23 involved, they can impose a fine of up to 10 percent of  
24 the amount of the death benefit, or with a maximum fine  
25 of \$10,000.



1           This does not create any private right-of-action.  
2           Senator Conrad, when we had, not our full committee  
3           meeting, but just meeting of members last week, said he  
4           was very concerned about the creation of any private  
5           right-of-action in the Code.

6           This does not do that. But it does provide some  
7           remedy that could be enforced if there were coercion by  
8           the employer, or the employer made a judgment not to hire  
9           the employee because the employee refused to take out the  
10          policy.

11          Senator Conrad.    Mr. Chairman?

12          The Chairman.    Senator Conrad?

13          Senator Conrad.    May we just inquire again of the  
14          Revenue Service, is this something that you can  
15          accommodate administratively?

16          Mr. Jenner.    Senator, this is essentially a question  
17          of labor law and not tax law. Therefore, I think you  
18          ought to look at it that way. In other words, it would  
19          not be an issue for the Tax Code as much as it is for  
20          employment law. The Internal Revenue Service and  
21          Treasury would not have a position on it.

22          Senator Smith.    Mr. Chairman?

23          The Chairman.    Senator Smith?

24          Senator Smith.    Is it not a fact that State labor  
25          laws would be covering this?

1           The Chairman.    I cannot answer that question.

2           Senator Conrad.   Can we ask the representative of  
3   the Revenue Service, again, are there examples of things  
4   like this?  The concern I had registered before, is there  
5   was a different amendment being suggested that would  
6   create potentially a private right-of-action in the  
7   Internal Revenue Code.  If we start going down that road,  
8   we will have an even more voluminous Tax Code.

9           Senator Bingaman, now, has come up with this  
10   proposal.  I am wondering, are there examples of an  
11   enforcement activity that basically is the relationship  
12   between the employer and the employee in the Tax Code?

13          Mr. Jenner.    Well, Senator, I would ask Mr. Yin to  
14   chime in as well.  There are certainly provisions in the  
15   pension law, ERISA, that provide employees rights of  
16   actions against employers, et cetera.  I am not sure that  
17   they carry over to the Tax Code, but they are essentially  
18   ERISA provisions and not the tax law pension provisions.

19          Senator Conrad.   It just seems to me that it is not  
20   unreasonable.  What Senator Bingaman is seeking to do  
21   here is a reasonable thing.  The question is, how is it  
22   best accomplished?  Is it best accomplished in this way  
23   in the Code, or is it something that should be addressed  
24   in some other venue?

25          Because typically in the Code--correct me if I am

1 wrong. Diann is a former tax administrator--the  
2 relationships that are addressed are the relationships  
3 between the taxpayer and the government. Those are the  
4 relationships that are discussed in the Code. This  
5 really goes to the relationship between the employer and  
6 the employee.

7 The question in my mind is not the reasonableness of  
8 what Senator Bingaman is attempting to achieve here. I  
9 think that is entirely reasonable. The question is, is  
10 this the way one wants to do it? Do you want to start  
11 addressing employer/employee relations in the Tax Code?  
12 Does the Treasury have a position on that?

13 Mr. Jenner. Senator, our position would be that, to  
14 the extent that provisions like this can be dealt with  
15 outside of the Tax Code, we would all be better off.

16 Senator Baucus. Mr. Chairman?

17 The Chairman. I asked Senator Nickles, first. Then  
18 I will get you.

19 Senator Baucus. All right.

20 Senator Nickles. Mr. Chairman, just looking at this  
21 amendment, I do not think it is needed and I would hope  
22 that it would not be adopted. I cannot imagine an  
23 employer mandating that, employee, you have to take this  
24 COLI policy, and employers paying for it, and the  
25 employer is the beneficiary.

1           But then saying, well, Mr. Employee or Mrs. Employee,  
2 if you do not take it, we are going to retaliate against  
3 you, like the loss of job, loss of bonus, or something  
4 like that, it is not needed. That is not going to  
5 happen.

6           At least, maybe my vision of the marketplace is  
7 different, but I just cannot imagine an employer doing  
8 that. So, I cannot think of any other fringe benefit,  
9 either. I mean, we have non-discrimination rules dealing  
10 with pensions and stuff.

11           But I cannot imagine someone discriminating and  
12 saying, well, we offer this, you do not want it,  
13 therefore we are going to discriminate against you. I  
14 just do not think that would happen, so I just think this  
15 amendment is unnecessary.

16           The Chairman.     Senator Baucus?

17           Senator Baucus.    I would just like to ask staff, or  
18 anybody who might know, what evidence is there thus far  
19 that some anti-coercion provision is needed? That is, my  
20 understanding is that most States have somewhat similar  
21 consent requirements. Maybe it is for COLI policies. I  
22 do not know.

23           But what is the problem here? It feels a little bit  
24 like this is a solution looking for a problem. I just  
25 want to know, what is the evidence? Something like this

1 may be needed independent of whether it should be in the  
2 Tax Code or be addressed someplace else in the law.

3 The Chairman. Ms. Miller or Ms. Howland, can you  
4 respond for us? Then Mr. Yin wanted the floor as well.  
5 So, you go ahead, Ms. Miller.

6 Ms. Miller. Thank you. Most States--or the  
7 majority of States. I believe it is 36--have some  
8 consent requirements for when insurance is issued on your  
9 life, you need to consent to the insurance.

10 A lot of States, like Montana, have an exemption if  
11 it is group coverage. So if the policy being purchased  
12 were an individual policy, under State law, the  
13 individual would have to consent. But if it were part of  
14 a group policy, they would not necessarily have to  
15 consent.

16 But the employment law, which was alluded to earlier,  
17 varies widely from State to State. In Montana, we have  
18 very strong laws that favor the employee. An employer is  
19 not allowed to fire an employee without cause. If an  
20 employee were terminated because of not signing a consent  
21 that was supposed to be voluntary under Montana law, the  
22 employee is already well protected. But there are some  
23 States where that is not true.

24 Senator Baucus. What is the evidence in other  
25 States? That is, whether there is coercion or not.

1 Ms. Miller. There is not any evidence.

2 Senator Baucus. And those States particularly where  
3 consent is required.

4 Ms. Miller. Right. There has not been any pattern  
5 or incidence of abuse that I am aware of.

6 The Chairman. All right. Mr. Yin?

7 Mr. Yin. Nothing, sir.

8 The Chairman. Senator Bingaman, do you want closing  
9 remarks?

10 Senator Bingaman. Let me just say, I will work with  
11 Senator Conrad to see if we can come up with a different  
12 variation on this, perhaps amending ERISA or some other  
13 part of the federal law, to solve his concern. So, with  
14 that understanding, I will plan to offer that when we get  
15 to the floor and I will withdraw it at this point.

16 The Chairman. All right. The amendment, then, is  
17 withdrawn.

18 That is the end of your amendments?

19 Senator Bingaman. That is the end.

20 The Chairman. All right.

21 I would ask that we report the bill. Those in favor  
22 of reporting the bill, say aye.

23 [A chorus of ayes]

24 The Chairman. Those opposed, say no.

25 [No response]

1           The Chairman.    The ayes have it unanimously.  The  
2 bill is reported.  Let the record show that there was a  
3 quorum present.

4           I would ask that the staff have authority to draft  
5 necessary technical and conforming changes to the  
6 Chairman's mark.

7           [No response]

8           The Chairman.    Without objection, so ordered.

9           Now I would like to turn to the committee's second  
10 order of business today.  I would like to call up the  
11 Chairman's mark, an original bill entitled, "The Highway  
12 Reauthorization and Excise Tax Simplification Act of  
13 2004."

14          Senator Nickles.   Which bill is it?

15          The Chairman.    The highway bill.

16          Senator Nickles.   Do we have a spread sheet?

17          The Chairman.    The only spread sheet I have seen so  
18 far is on the bill we just reported.

19          Senator Nickles would like to have our spread sheet,  
20 if there is not one already disseminated.

21          Senator Nickles.   Is the latest one January 30?

22          The Chairman.    Let me check.  Can staff advise, is  
23 January 30 the latest spread sheet we have?  The safest  
24 thing to say is, you are going to get another one.

25          Mr. Prater.    Senator Nickles, we will have a spread

1 sheet that shows the Highway Trust Fund accounting and  
2 where we will require offsets. Russ and I will explain  
3 that. Then we will tie that to a revenue table with the  
4 offsets in there.

5 Senator Nickles. And do we get to see the revenue  
6 table?

7 Mr. Prater. I will have to ask George.

8 The Chairman. Now, Senator Nickles, you will be  
9 taken care of shortly, I believe.

10 Mr. Yin, on my right, you are ready for a description  
11 of the modification, or were you not prepared for that?

12 Mr. Yin. Senator, did you want me to run through  
13 every single item, or just the highlights?

14 The Chairman. Just the highlights.

15 Senator Nickles. If there is a spread sheet  
16 available, I would like to see it. I have been doing  
17 some homework on one, but I happen to know it is obsolete  
18 and I would like to be working on the new one.

19 Mr. Yin. Senator, we will have a revenue table for  
20 you very shortly. There is another table that involves  
21 the transfers between the general fund to the Highway  
22 Trust Fund and so forth, and that is separate from the  
23 revenue table.

24 Senator Nickles. Do we get to see that?

25 Mr. Yin. Yes. We should have that very shortly.



1           The Chairman.    There was no intention for members  
2 not to be able to have access to that.  It is just a  
3 matter of, it is not prepared yet.  But that will be  
4 shortly, within a few minutes.  Right, Mr. Yin?

5           Mr. Yin.    That is correct, Senator.

6           The Chairman.   We do now have it being handed out.  
7 All right.  I think, just the highlights, Mr. Yin.

8           Mr. Yin.    Thank you, Mr. Chairman.

9           In the Chairman's modification to the mark, one item  
10 that is included is a proposed transfer from the Airport  
11 and Airway Trust Fund to the Highway Trust Fund.

12          Let me explain the background of this.  In the  
13 underlying mark there is a provision which was intended  
14 to curb fraud in the use of aviation fuel for highway  
15 purposes.

16          Senator Baucus.   Does that have a number here?

17          Mr. Yin.    The provision in the modification is Item  
18 A3, which is on page 7.  I am sorry.  It is in Section 2,  
19 Item A3, and it is on page 7 of the modification to the  
20 mark.  But the aviation fuel fraud provision itself is in  
21 Part 3, Item A, page 19 of the underlying mark.

22          Senator Baucus.   Thank you.

23          Mr. Yin.    In the underlying mark, there is a  
24 proposal to try to curb this fraud by requiring taxpayers  
25 to pay the full excuse tax on purchase of aviation fuel

1 up front, and then if they are entitled to a reduced rate  
2 because of the use of the tax, that they would obtain  
3 that through a refund mechanism.

4 The idea was to curb the fraud. Unfortunately, upon  
5 further review, staff determined that there would still  
6 be incentives to undertake this fraud, primarily because  
7 of the State tax ramifications. That is, for State tax  
8 purposes, the excise taxes on highway fuels is, in  
9 general, much higher than the excise taxes for aviation  
10 fuels.

11 Therefore, under our analysis, although the proposal  
12 in the Chairman's mark would raise a certain amount of  
13 federal revenue, that revenue would end up in the  
14 Aviation Trust Fund, even though, as a conceptual matter,  
15 this money should, by rights, end up in the Highway Trust  
16 Fund.

17 Therefore, in this modification, what the  
18 modification does is it authorizes the Secretary to make  
19 a transfer from the Aviation Trust Fund to the Highway  
20 Trust Fund, essentially equal to the amount of the  
21 estimated over-payment that is being made to the Aviation  
22 Trust Fund.

23 In addition to that, one other provision that is in  
24 the Chairman's modification to the mark is a proposal  
25 relating to employer-provided transit and van pooling

1 benefits.

2 As you know, Senator, under current law there is a  
3 differential between the amount which can be excluded  
4 from income as a result of parking benefits versus  
5 transit and van pool benefits. In general, for parking  
6 it is \$190 a month, and for transit and van pooling it is  
7 \$100 a month permissible exclusion.

8 Under the proposal, which is in the Chairman's  
9 modification to the mark, it would increase the  
10 permissible exclusion for transit and van pooling up to  
11 \$120 a month.

12 In addition, one other item that I will mention in  
13 the Chairman's modification to the mark is a proposal to  
14 modify the corporate estimated tax payments in 2009, and  
15 to require the amount that would otherwise be due in 2009  
16 to be increased by a 19 percent amount, so that  
17 corporations would be required to make, in the last  
18 quarter of 2009, a 119 percent payment as opposed to the  
19 amount they would otherwise have been required without  
20 this change.

21 Senator Nickles. Mr. Chairman?

22 The Chairman. Before you ask questions, are you  
23 done with the walk-through?

24 Mr. Yin. I am, Mr. Chairman.

25 The Chairman. All right. We are ready for

1 questions then. I will start with Senator Nickles.

2 Senator Nickles. I did not catch exactly, Mr. Yin,  
3 what you were talking about in the last, but it sounded  
4 like you were trying to beef up the corporate estimated  
5 payments in 2009, moving more money up. That sounds very  
6 smokish and mirrorish, and just exactly what I was hoping  
7 we would not be doing. So, did my ears hear you  
8 correctly?

9 Mr. Yin. Your ears heard me correctly. The purpose  
10 of this was to make sure that, during the first six years  
11 when there would be a certain amount of transfers from  
12 the general fund to the Highway Trust Fund, that there  
13 would be enough money flowing back into the general fund  
14 to make it whole during that six-year period.

15 Senator Nickles. Mr. Chairman, I want to thank you  
16 for trying to do that. I just do not like the way we  
17 have done it. That does not pass the test, as far as I  
18 am concerned, in the sixth year.

19 But I do appreciate the interest. I think what the  
20 Chairman and Ranking Member are trying to do is to make  
21 sure that we are not paying for this bill with deficit  
22 financing. I looked at a couple of the pay-fors.

23 What this Senator's preferred provision would be is  
24 that we would have a smaller bill, so we would not be  
25 doing this. I would rather do this than have deficit

1 financing.

2 But, that being said, I do not buy the accelerated or  
3 the increased corporate estimated payments for one  
4 quarter or one year.

5 Mr. Prater. It is a quarter in each year, Senator  
6 Nickles.

7 Senator Nickles. A quarter in each year throughout  
8 the six-year period, or just for that last year?

9 Mr. Prater. Oh, no. I am sorry. In the fifth and  
10 sixth years. That is just to smooth out the revenue  
11 flow. There is more revenue in the back end of the bill  
12 because of the nature of the revenue raisers.

13 Our only alternative would be to add other revenue  
14 items, but that would then make the bill over-balanced.  
15 We would have more revenue over the 10-year period than  
16 was needed.

17 Senator Nickles. I have great respect for staff and  
18 their ability to be able to find money in various ways.  
19 I understand that you did not want to find too much  
20 money. I hear what you are saying. But I do not like  
21 the way it has been done in that last year, and I would  
22 just throw that out. I just heard it. I have not looked  
23 at the numbers.

24 Mr. Prater. Let me correct myself. Mr. Yin pointed  
25 something out here. We would be changing the quarters.

1 This just deals with 2009, or the payments in 2009, July  
2 1, 2009 and October 1, 2009. So, it would be two events  
3 where the shift occurred, but it would only be with  
4 respect to one year.

5 Mr. Yin. It would be just the last quarter of 2009.  
6 You can think of the last quarter as being a greater  
7 amount that could be required.

8 Mr. Prater. Right.

9 The Chairman. Could I anticipate other members  
10 having similar questions as Senator Nickles and ask staff  
11 if in most cases, if not every case, of pay-for they are  
12 things that this committee has favorably voted on in the  
13 past, including the one that Senator Nickles just raised  
14 a question about?

15 Mr. Prater. Mr. Chairman, we use this device as it  
16 was in the 2001 EGTRA tax bill. I should say that it  
17 went the other way. We delayed a portion of the  
18 corporate estimated tax payment. I believe we used it in  
19 the 2003 bill as well.

20 The Chairman. Then not only in this instance, but  
21 other instances of pay-fors in this bill, we have voted  
22 on those before and used them before. Right?

23 Mr. Prater. That is correct.

24 The Chairman. All right. So would it be fair to  
25 say that there is really nothing new from the standpoint

1 of pay-fors, or is there?

2 Mr. Prater. It is the same device that we have used  
3 previously.

4 The Chairman. All right.

5 Senator Conrad. Mr. Chairman?

6 Senator Graham. Mr. Chairman?

7 The Chairman. Senator Conrad, then Senator Graham.

8 Senator Conrad. Mr. Chairman, I would want to join  
9 Senator Nickles in saying this is really not paying for  
10 anything. That is just shifting the date of collection  
11 around to make it look as though we have paid for  
12 something. We have not paid for anything with that  
13 particular device.

14 On the other hand, I do want to acknowledge, as  
15 Senator Nickles did, that Chairman Grassley and our  
16 Ranking Member have done a whole series of things here to  
17 fill in most of the hole. I am very appreciative of  
18 that, and we want to acknowledge that.

19 But I do not know why we do not do it. I think it  
20 will cost another \$7 or 8 billion to really fill in the  
21 hole instead of using a timing device, which just makes  
22 the deficit hole on the back end worse. We could use  
23 Custom user's fees. Those have been used before, but  
24 there are still Custom user's fees on the table that  
25 could be used here.

1           There are also some more modest provisions that are  
2 in an amendment that a number of us have worked on here  
3 that involve Title 4, Section F from the JOBS Act, a  
4 series of technical provisions.

5           But most of it would be done through Custom user's  
6 fee. Then we could all walk away and we would have  
7 fulfilled our obligation. We would have done this. We  
8 had done it, not with funny money financing, but with a  
9 straight pay-for.

10          The Chairman. Before Senator Graham asks a question  
11 or makes a statement, I would like to have staff respond  
12 to Senator Conrad.

13          Mr. Sullivan or Mr. Prater?

14          Senator Baucus. Mr. Chairman?

15          The Chairman. I am sorry.

16          Senator Baucus. Might I also, just generally, help?  
17 I think this chart here, the one that explains the  
18 revenue that is raised, dealing with offsets, and so  
19 forth. I think if we go through that--I hate to say it--  
20 item by item, it would clear up a lot of the questions  
21 that have been raised. If we might, Mr. Chairman, I  
22 would just encourage us to do that. I think it would  
23 help with Senator Conrad's question.

24          The Chairman. Senator Graham, would it be all right  
25 if we did that before you speak?



1 Senator Graham. Yes, Mr. Chairman.

2 The Chairman. We have responded to the rump session  
3 we had of members last week to the concerns that were  
4 expressed of revenue neutrality and things of that  
5 nature.

6 For the Chairman to answer Senator Conrad, it is kind  
7 of a balance that we have sought here between those  
8 people that did not want tax increases, like the gas tax,  
9 and yet the necessity of responding to budgeteers', like  
10 yourself, and Senator Nickles' concerns.

11 I would ask our staff then to be more specific. Then  
12 I will call on Senator Graham.

13 Mr. Sullivan. Before Mark begins, I would like to  
14 point out, if you look down in the second section  
15 entitled, "Revenue Additions to Highway Trust Fund." It  
16 is underlined, the final line. It reads, "Additional  
17 Revenue for Highway Trust Fund." It says 30.0 in  
18 billions. It should be \$35 billion. If you add up those  
19 numbers, it adds up to 35.

20 Mr. Prater. Mr. Chairman and members of the  
21 committee, thank you. Let me begin. The purpose of this  
22 table is to reconcile the gross revenue raised in the  
23 trust fund with the deficit impact and to show the offset  
24 effect to get the bill to deficit neutral.

25 What we did, this is a product of the concern raised

1 by many in the members' meeting last week, a concern that  
2 the committee would be approving a bill that, though  
3 raising the resources in the trust fund, that bill would  
4 have the effect of adding to the deficit.

5 So, Senator Baucus and others, and our staff all  
6 worked together to come up with a way to plug that hole,  
7 in a sense. That is what this chart will show you.

8 Let me start, first, with our first task. We came to  
9 an agreement with the Environment and Public Works  
10 Committee to fund their outlay obligations. So, there is  
11 an outlay number that is basically the cash hit or the  
12 cash equivalent hit on the trust fund.

13 This committee's jurisdiction is the trust fund, the  
14 taxes, and the policy connected to it. So, that was our  
15 goal. That was our agreement with the Environment and  
16 Public Works Committee. That number in your table here  
17 is the 231 number.

18 When you look at it, the baseline gas tax receipts  
19 are not high enough to fill that obligation. So, in a  
20 sense, we had a deficit to make up within the trust fund.

21 Senator Baucus. That 35.

22 Mr. Prater. Yes, sir. In that case, what the  
23 committee staff did was we looked at several areas within  
24 the trust fund, principles such as the volumetric excise  
25 tax credit proposal and other things where the trust

1 fund, even though there are gas tax and diesel tax  
2 dollars paid in the trust fund in a sense, because of  
3 many policy initiatives approved by this committee, is  
4 not necessarily made whole. So, we changed the  
5 accounting.

6 We also embarked on a different track of fuel fraud  
7 reform. We spent about two years of extensive  
8 investigation and staff work and came up with a number of  
9 proposals that will materially change compliance and,  
10 indeed, the Joint Committee scores us resources for that.

11 In terms of meeting our \$35 billion target, you will  
12 see that fuel fraud compliance and mobile machinery is  
13 your first figure there, \$5 billion. The committee has  
14 already assumed, for purposes of the budget resolution  
15 and other purposes, that the 2.5 cent gasohol transfer  
16 would be counted for this purpose.

17 When you look down the table here in revenue  
18 additions, the starred items, the things with two  
19 asterisks in front of them, those were things that were  
20 accounting changes, but that the Joint Committee and CBO  
21 will not score as revenue. So, those are the things  
22 that, in a sense, create our deficit problem.

23 The 5.2 gasohol there is the VTEC proposal. Interest  
24 is the interest on the trust fund balance. Gas guzzlers  
25 deals with a tax that is presently a general fund tax

1 that really should be a dedicated trust fund tax. Then  
2 we changed the refund mechanism with respect to the  
3 Highway Trust Fund.

4 Mr. Sullivan. I might add, for each of those four  
5 items, while the Highway Trust Fund would see an increase  
6 in revenues, the general fund would see a similar  
7 corresponding decrease in revenues.

8 Senator Baucus. However, when you get down to the  
9 bottom of the page --

10 Mr. Sullivan. We have offsets for those.

11 Mr. Prater. So what we did, is within those  
12 additions to the highway account, to basically gross up  
13 the revenue in the highway account to meet our agreement  
14 with the Environment and Public Works Committee, we had a  
15 category of accounting changes and compliance changes.

16 Transit. A transit account is not the Environment  
17 and Public Works Committee's jurisdiction, it is the  
18 Banking Committee's. They have yet to mark up, but we  
19 had to move forward. So we ascertained, from the Budget  
20 Resolution and other sources, what their outlay number  
21 was.

22 Again, that is the cash hit on the trust fund. So,  
23 we ascertained that number to be \$36.6 billion. Again,  
24 we are short because, as you can see in the first line,  
25 the revenue raised, the baseline revenue that is

1 allocated to the mass transit account, is \$31.8 billion.

2 So, we have three other entries there: 1) spend-down  
3 of the balance that we anticipate; 2) \$600 million, real  
4 dollars, for fuel fraud that is allocated to the mass  
5 transit account; 3) and then interest on the mass transit  
6 account.

7 As you can see, the interest is something that is not  
8 what we would call real revenue, so that is added to our  
9 offset obligation.

10 Senator Lott. Could I inquire about that point?

11 The Chairman. Yes, go ahead.

12 Senator Lott. Is this interest just an amount that  
13 we picked out of the Mass Transit Authority Fund, or is  
14 that the interest that relates to the so-called transit  
15 2.8 cent per each gallon taxed?

16 Mr. Prater. My understanding, Senator Lott--and  
17 Russ and anybody else can jump in--

18 Senator Lott. You can just pick a figure and take  
19 it out.

20 Mr. Prater. This figure comes from our discussions  
21 with both CBO and the Banking Committee.

22 Senator Lott. But it is interest that comes from --

23 Mr. Sullivan. Balances in the mass transit account.  
24 Both the Highway Trust Fund and the Mass Transit account  
25 maintain a balance. Currently, it is about \$4 billion.

1 The Mass Transit account currently is much higher than  
2 the Highway's \$12 billion. So, each of them earn  
3 interest. Currently, the interest is credited to the  
4 general fund.

5 Mr. Prater. One thing I have to tell the committee,  
6 though, is again, the Banking Committee has not marked up  
7 yet. So, unlike the Highway piece, all we're doing here  
8 is funding what their outlay figure is. So, they have  
9 yet to mark up.

10 So when you take all those items that are counted as  
11 trust fund resources, additional trust fund resources for  
12 both mass transit and highways, when you add all of that  
13 up, basically the deficit impact, if we were not to  
14 offset these matters, is the total that you will see  
15 under "Total Offsets Needed," which is \$21.7 billion.  
16 Again, we have toted up there the ones that we have  
17 identified as accounting changes that do not produce  
18 scorable revenue.

19 So what we did, was we took that number and then  
20 applied a number of revenue offsets that the committee  
21 has previously approved to that number. You will see,  
22 there is a slight gap there for a couple other items that  
23 are in the modification that lost revenue, again, with  
24 the goal being here that over the 10-year period, that we  
25 are deficit neutral.

1           As I was saying to the Chairman, the reason we had to  
2 go to the shift on the estimated tax, is we had to smooth  
3 out that revenue window.

4           Senator Conrad.   Mr. Chairman?

5           The Chairman.   All right.   Go ahead.

6           Senator Conrad.   May I just inquire of Mr. Prater?

7           The Chairman.   Yes.   Please do.

8           Senator Conrad.   Let me just ask you this, if I can.  
9 Where does it show up, the shift in corporate receipts,  
10 on this balance sheet?   I do not see it here.

11          Mr. Prater.   You are correct, Senator Conrad.   It is  
12 not on this sheet.   Mr. Yin has prepared the revenue  
13 table which will show where the shift occurs.

14          Senator Conrad.   And that is \$11 billion that is  
15 being credited to the shift.

16          Mr. Sullivan.   That is correct.

17          Senator Conrad.   Let us just make sure that every  
18 member understands what this shift is all about.   You are  
19 shifting revenue out of 2010 into 2009?

20          Mr. Prater.   Right.

21          Senator Conrad.   So you are just increasing the  
22 deficit in 2010 and shifting the money.

23          Mr. Prater.   But over the 10-year period, there is  
24 no effect from that.   Basically, it smooths out the lump  
25 that occurs for some years vis-a-vis the five-year

1 period.

2 Senator Conrad. Well, there is an effect in 2010:  
3 you have got less revenue than you were going to have,  
4 and you have got more revenue in 2009.

5 Mr. Sullivan. Senator Conrad, that is correct. But  
6 the revenue offsets dealing with shelters, that is a 10-  
7 year number. So, approximately \$11 billion, that amount  
8 is revenue raised in years 7, 8, 9 and 10.

9 So, if you do the corporate shift, it makes the  
10 latter years fairly revenue neutral. Otherwise, what you  
11 would have, is you would have a significant deficit in  
12 the first six years and a significant surplus in the last  
13 four years.

14 Senator Baucus. If I might add to this. I think  
15 you are all making a very good point. I mean, namely, we  
16 do not want to add to the deficit. So, the committee has  
17 been very sensitive to that and has tried to figure out a  
18 way that it does not add to the deficit in a way that is  
19 totally responsible.

20 The shift in corporate income in one year actually  
21 has moved forward, and then it is canceled out the next  
22 year. That is something that we can work. To be honest,  
23 it is not something I am very comfortable with. At least  
24 for the time being, we have met the funding needs  
25 required in the highway bill.



1           Just as sometimes around here we make some changes  
2 today, it is sort of like a bridge policy of some kind  
3 and we make subsequent changes at a later date to undo,  
4 fix, or to change in some way something that we have done  
5 at an earlier date.

6           Now, I suppose we could do Custom user fees. But if  
7 we used that, then we would have to sunset it, otherwise  
8 you would have a lot of extra revenue out there in the  
9 out years, the years after six years. I just do not know  
10 if that is something that we want to do.

11           Senator Conrad. Can I ask Mr. Sullivan, Mr.  
12 Chairman, to clarify something he said?

13           The Chairman. Yes.

14           Senator Conrad. What I hear you saying--correct me  
15 if I am wrong--is that moving the corporate receipts that  
16 would otherwise occur in 2010 into 2009 is subsequently  
17 offset by other revenue provisions we are passing that  
18 would have effect in 2010 and beyond?

19           Mr. Sullivan. Yes, Senator. It is the effect of  
20 these revenue offsets that are listed at the bottom of  
21 this page, the tax shelter provisions. Their revenue  
22 impact in years --

23           Senator Conrad. Would be ongoing.

24           Mr. Sullivan. Right. Correct.

25           Senator Conrad. And would offset the cost of the

1 corporate revenue shift. So, the deficit would be no  
2 worse off in 2010 and beyond if we did this. Is that  
3 what you are saying?

4 Mr. Sullivan. Right.

5 Senator Nickles. Mr. Chairman?

6 The Chairman. Senator Nickles, on this point, I  
7 hope. And then the next person I will call on is Senator  
8 Graham.

9 Senator Nickles. Mr. Chairman, one, I want to  
10 compliment Senator Conrad. I am delighted to hear  
11 Senator Baucus say he is uncomfortable with it. This is  
12 a shell game between 2010 and 2009.

13 It just basically moves up money, \$11.4 billion in  
14 2010, and puts it in 2009, and says we will make it up in  
15 2010. It makes you comply with the five-year number, and  
16 maybe the six-year number. But that is all it does. It  
17 is not legitimate and it is not defensible.

18 So, those of us that want a highway bill, but also  
19 want it to be to where it is not increasing the deficit,  
20 have to do one of two things. We either have to cut the  
21 spending by about \$11 billion, or we have to find another  
22 \$11 billion to do it.

23 There are other options out there. Senator Baucus  
24 mentioned Custom user fees. We have used those for lots  
25 of other things. But one thing about it, when we have

1 used it in the past, many times it has been on bills that  
2 did not become law. This is likely to become law, and  
3 one way or another we need to pay for it. I would prefer  
4 a little less. This is a growth in this bill of about 42  
5 percent.

6 I would think we could grow it a little less than  
7 that and still have a significant increase, a lot of new  
8 jobs, and be a lot more responsible. But I do not think  
9 the shell game between 2009 and 2010 is legitimate.

10 So, I hope that the committee will collectively work  
11 together to see if we cannot find a better way. If we  
12 are going to pay for it using non-highway directed money,  
13 I would hope that we would find a better pay-for than  
14 juggling between the two. I appreciate staff's interest.

15 I knew when I was looking at the spread sheet and it  
16 was two or three days old, I thought, I know I am wasting  
17 my time. I know this very clever staff is going to have  
18 another idea. And they did. I just think we should  
19 reject this one and see if we cannot find a better one.

20 Mr. Prater. Mr. Chairman, if I could just --

21 The Chairman. You can respond to that. Then  
22 Senator Graham has got the floor.

23 Mr. Prater. We were faced with a Hobson's choice,  
24 because if we were to add Customs user fee or any of  
25 these other things, we grow the size of the bill over and

1 above what we are doing here.

2 As a committee person, one of the first rules I  
3 learned was never to send a bill to the floor where you  
4 are leaving extra revenue on the table that the committee  
5 cannot control. So, that is the choice you face.

6 Senator Conrad. Beyond the six years.

7 Mr. Prater. Right. That is correct.

8 Senator Nickles. And we sunset it at the year 2009  
9 or 2010.

10 Mr. Prater. But, Senator Nickles, I think we, as  
11 staff, would be fearful that you would be sending a mixed  
12 message on the policy, that you want the tax shelter  
13 reforms to be permanent law. You want the folks out in  
14 the community to feel that that is permanent policy.

15 Senator Nickles. Make everything permanent except  
16 for the Custom user fees, and have that curtail at a  
17 certain point to have it raise the amount of money we  
18 need to do.

19 Senator Baucus. No. That is not a gimmick.

20 Mr. Prater. We looked at all of these kinds of  
21 things. The problem is the pattern. It is your pattern  
22 of the shelters and these other offsets. They grow in  
23 those out years, just because of baseline and other  
24 considerations.

25 Senator Conrad. Mr. Chairman? Might I just make

1 the observation that the worst thing that happens is  
2 that, in the year beyond the six years, you are actually  
3 reducing the deficit a little. That does not sound too  
4 bad to me.

5 Senator Nickles. Knowing our colleagues on  
6 Environment and Public Works, that will not happen.

7 Senator Conrad. You think they will suck up the  
8 money.

9 The Chairman. Senator Graham?

10 Senator Graham. I have several questions. But,  
11 first, I would like to make a comment as to why we have  
12 this problem in 2009. The underlying bill has as a goal  
13 to bring every State up to 95 percent return of what it  
14 pays in. As we know, there are a number of States today  
15 that are so-called "Donor States." That is, they ship a  
16 lot more than they get back.

17 The way much of this formula is structured, is that  
18 you stay at about the current state of return until the  
19 last year of this bill, and then you jump up to 95  
20 percent. That is what is causing this uneasiness.

21 I think that, in addition to looking at how we ought  
22 to finance this, we ought to look at whether that policy  
23 makes sense or whether we should not have more of a  
24 smooth, glide slope from wherever we are today up to 95  
25 percent.

1           I am concerned about several things. One, is how  
2 many of these offsets, such as the tax shelter for  
3 corporate governance, have been utilized in legislation  
4 which is currently still viable?

5           Mr. Prater. Senator Graham, some of these offsets  
6 are used in the FSC ETI replacement regime bill known as  
7 the JOBS bill.

8           Senator Graham. Could I ask a question? For  
9 instance, we say tax shelters' corporate governance is  
10 15.8. How much is the similar item which is in the FSC  
11 bill? What is its number?

12          Mr. Prater. The scoring is very close to the same,  
13 if not identical. I will defer to Mr. Yin to correct me  
14 on that if I am wrong.

15          Mr. Yin. Mr. Prater is correct. The difference  
16 would be that these are updated numbers for our new  
17 baseline, whereas, the numbers that are in the JOBS bill  
18 from last fall were based on last year's baseline. So,  
19 there are slight differences, but essentially the  
20 proposals are the same.

21          Senator Graham. I understand these are also used in  
22 charitable giving. What is the amount that is using in  
23 charitable giving?

24          Mr. Prater. I believe, Senator Graham, that we have  
25 used nearly all of the shelter amount in care. There is

1 a slight difference on the effective date, I believe--I  
2 am recalling this from memory--that makes the amount  
3 slightly lower.

4 Senator Graham. So this would be the third time we  
5 have used the same provision in legislation that is  
6 viable?

7 Mr. Prater. For purposes of the record, we also  
8 used it when the committee approved the growth bill in  
9 the spring, but in conference those provisions dropped  
10 out.

11 The Chairman. Senator Graham, one difference. I  
12 know you are concerned about the economic substance  
13 argument. That is not in the CARE package, as opposed to  
14 being in this package, as one example.

15 Senator Graham. When we talked about this last  
16 Thursday, I guess it was, I got the impression that this  
17 is what would be called the more aggressive corporate  
18 tax. It does include the economic substance.

19 Mr. Prater. You are correct.

20 The Chairman. That is what I was trying to say.

21 Senator Graham. So my concern is, it looks like  
22 all three of these bills have a reasonable chance of  
23 passage. There is a lot of support for the FSC. In  
24 fact, I think that gets close to being a must-pass bill.  
25 There is a lot of support for the charitable giving.

1       Everybody wants to pass a highway bill. Which bill gets  
2       to use it, the one that gets passed first?

3           Mr. Prater. Let me tell you, Senator Graham, that  
4       we have encountered resistance from the House in using  
5       these kinds of offsets for the charitable bill. Pursuant  
6       to that, the staff are looking at a number of new revenue  
7       offsets in the charitable area that are springing out of  
8       our investigation and some of the evaluation problems,  
9       and other things.

10          So, while I do not deny that it is possible that it  
11       could end up on the scorecard, in a sense, going into  
12       conference, I think that it is not likely, at least for  
13       the charitable bill, to be something used in the end.

14          I will have to say, this seems not to be honest,  
15       Scotch accounting to count the same revenue item three  
16       times on three bills that have a reasonable chance of  
17       enactment.

18          The second question is, the highway bill is a six-  
19       year bill. Many of these tax measures are 10 years. Are  
20       we calculating what they will produce in the first 6  
21       years of their 10-year life?

22          Mr. Prater. Yes, sir. That is carried on the  
23       table. That is why we wanted to give you the two  
24       different sheets, because there are really two different  
25       exercises. One, is what is going on in the trust fund,



1 and the other is what is going on for budget purposes.

2 Senator Conrad. Mr. Chairman?

3 Senator Bunning. Mr. Chairman?

4 The Chairman. I think we should let Senator Graham  
5 finish, first. He has been very patient.

6 Senator Graham. My last question is going to be to  
7 Mr. Jenner. You represent the Treasury, Mr. Jenner?

8 Mr. Jenner. That is correct, Senator.

9 Senator Graham. There was an article in today's  
10 *Washington Post* indicating that the President, this  
11 weekend, indicating that he would not sign a highway bill  
12 which either had a new gasoline tax or which utilized  
13 revenue from the general revenue as opposed to a  
14 dedicated source.

15 Do you think that this funding base would violate  
16 either of those two "don't do" standards of the  
17 President?

18 Mr. Jenner. Senator, I did not see the *Washington*  
19 *Post* article so I cannot comment directly on that. The  
20 committee should expect a written communication from  
21 Secretary Snow and Secretary Minetta, hopefully by the  
22 end of today, that articulates the principles that the  
23 administration used to put together the SAFT proposal and  
24 the principles that the administration hopes the  
25 committee and the Congress will use to finally enact its

1 legislation.

2 There is concern that highway spending should be out  
3 of the Highway Trust Fund and not out of the general  
4 fund, and that it should use taxes imposed on highway use  
5 rather than taxes, generally, in order to maintain the  
6 link between highway taxes and highway spending.

7 Senator Nickles. Senator Graham, just to give you  
8 some additional information. That was in response to a  
9 question that I asked the President. Surprisingly  
10 enough, characterizing the paper, the thrust of it was,  
11 the highway bill should be paid for and should not  
12 increase the deficit. He concurred with that.

13 Everything Mr. Jenner just said, I happen to agree with,  
14 and I think the President would agree with.

15 But the thrust of it was, we should not be adding to  
16 the deficit with the highway bill. He said he did not  
17 want a gasoline tax increase. He did not use the words  
18 "did not want to increase the debt," but that as the  
19 thrust of it.

20 Senator Graham. Could you give us an inkling as to  
21 whether you think the Secretary of the Treasury and the  
22 head of the Office of Budget will consider these actions  
23 to be violative of the President's standard?

24 The Chairman. Tomorrow, Secretary Snow will be  
25 before the committee, so it would be appropriate, I would

1 think, to ask him at that particular time.

2 Senator Graham. But we are being asked to vote on  
3 this today.

4 The Chairman. I am sorry. You are absolutely  
5 right. I withdraw my statement.

6 Mr. Jenner?

7 Mr. Jenner. Senator, we have not had a chance to  
8 look at all of the proposals. But it would be my sense  
9 that there would be significant concern about the use of  
10 the revenue raisers that are listed, both from a  
11 budgetary point of view and from a substantive point of  
12 view. We have serious policy concerns about some of the  
13 revenue raisers included.

14 Senator Bunning. Mr. Chairman?

15 The Chairman. All right. Now, I have had four  
16 members, Senator Conrad, Senator Jeffords, Senator  
17 Santorum, and Senator Bunning. So if I go with Senator  
18 Conrad, I am going to go over here to Senator Santorum,  
19 then to Senator Jeffords, and then to Senator Bunning.

20 Then could I ask, since we will be debating some of  
21 these things as we get into amendments, I wonder if it  
22 would be all right, at the end of four questioners, if we  
23 would go to the modification being adopted and then go to  
24 amendments.

25 Senator Conrad?

1           Senator Conrad.    I was just ready to offer an  
2 amendment.   In light of what Treasury had indicated, I  
3 would be happy to withhold until later.

4           The Chairman.    All right.

5           Senator Santorum?

6           Senator Santorum.   Thank you, Mr. Chairman.

7           One question I have, is throughout the history of  
8 transportation funding, have we ever used money other  
9 than money raised from fuel taxes to pay for highways?

10          Ms. Levy.    Yes.   There are other excise taxes that  
11 go into the trust fund that are not on fuel.   There is a  
12 heavy vehicle use tax, a tax on tires.

13          Senator Santorum.   So, transportation-related taxes,  
14 though.

15          Ms. Levy.    Right.

16          Senator Santorum.   So this would be somewhat  
17 precedent setting to use revenue offsets that are not  
18 related to transportation to pay for transportation  
19 funding.

20          Ms. Levy.    That is actually not what is happening,  
21 which is why Mr. Prater had said we had two different  
22 charts.   What we are using to pay for the funding in the  
23 Highway Trust Fund are either fuel or other  
24 transportation-related excise taxes that are currently  
25 being paid to the general fund that this proposal

1     redirects to the Highway Trust Fund, or are currently  
2     being lost to the Highway Trust Fund as refunds which  
3     will now be lost to the general fund as refunds.

4             It was those holes in the general fund that  
5     redirecting these taxes would cause that needed to be  
6     offset. Those revenue offsets are at the bottom of that  
7     sheet.

8             Senator Baucus. I might add, if the Senator might  
9     yield, this committee has pass all of those offsets many  
10    times, and the Senate has passed them also a couple of  
11    times. So, they are not new.

12            Now, that is not totally relevant to this Senator's  
13    inquiry, but it is trying to address the question raised  
14    by one of the Senators on our side in asking the Treasury  
15    whether the Treasury supports these or not. The point  
16    is, we have passed these many times. I daresay, I think  
17    the President would also support them.

18            Senator Santorum. Just following up with what  
19    Senator Graham had to say which concerned me, that is a  
20    better understanding and I appreciate that. His comment  
21    was that these revenue measures have been used in other  
22    bills, in particular the FSC bill. The CARE Act, we have  
23    been working on, and I do believe we will have other  
24    offsets. So, I am not as concerned about the CARE Act  
25    offsets that are in this.

1 I am concerned about the FSC offsets that are in  
2 here. I believe, as Senator Graham does, that that is a  
3 must-pass bill. If I heard anything when I went home in  
4 Pennsylvania, I heard, we are getting our lunch eaten by  
5 losing manufacturing jobs overseas. I do not want to go  
6 home empty-handed without a bill that is going to at  
7 least do something to help us be competitive with foreign  
8 competition.

9 I am concerned that if we are using a pot of money  
10 that is a rather substantial one out of that bill, that  
11 we are thinking about how we are going to make up that  
12 money so we can give some help to our manufacturers as  
13 they are challenged with global competition. So, I want  
14 to make that point very clearly.

15 The Chairman. Yes. I think, before I go to Senator  
16 Jeffords, even though FSC ETI is out on the floor, we  
17 have been looking at this. I think Mr. Prater could help  
18 us understand that we are not entirely robbing Peter to  
19 pay Paul.

20 Mr. Prater. Senator Santorum, we share your concern  
21 and we are looking eventually to conference. The  
22 committee has been developing other offsets on the  
23 corporate side. We are very pleased that the  
24 administration has joined us, for instance, in terms of  
25 the sale/lease-back transactions of municipals.

1           We expect that that, though that proposal is still,  
2 frankly, being developed, technically, that that will  
3 supply us with a lot of revenue. We are also looking in  
4 other places.

5           So, I do not think the committee should view this as  
6 the ceiling on potential offsets. There are others that  
7 we are going to develop. This committee actually has  
8 been unique, I think, in the Congress in terms of  
9 developing offsets. We will continue to develop them.  
10 Our staff worked pretty hard on that. So, I can  
11 guarantee you, there will be many billions more coming  
12 just from that offset.

13           The Chairman.    Senator Jeffords?

14           Senator Jeffords.   I think I speak for Senator Hobb  
15 as well as myself to say that if you want to try  
16 something, try to get a bill out that everybody is happy  
17 with. We have tried our best.

18           I would point out that we have also, from the revenue  
19 perspective, balancing perspective, the administration  
20 provided a proposal that only paid for 95 percent.  
21 Working with the various committees, we have a proposal  
22 here that comes with 100 percent. Thus, we have done  
23 what we believe is what needs to be done, and which  
24 should make, hopefully, everyone happy.

25           I tell you, if we screw this bill up, we are going to

1 have to face the House anyway. But if we do not move  
2 this bill along, we are going to have a heck of a  
3 problem. You have got to remember all the jobs that are  
4 going to be created here. But they will not be created  
5 until this bill passes.

6 The Chairman. Senator Bunning?

7 Senator Bunning. Thank you, Mr. Chairman.

8 I do not know how many times on Ways and Means, in  
9 the eight years that I sat over there, that we used the  
10 same number in many different bills to produce revenue to  
11 pay for some wonderful cause like new highways and new  
12 transit. We never seem to use it more than once.

13 The first bill that got to the floor and used it  
14 erased all the other bills that might have it in it. But  
15 I think we are anticipating something that might not  
16 occur. We are talking about conferences and conference  
17 committees.

18 It is my understanding right now that it is a non-  
19 entity, that there are no conferences going to be  
20 proposed, and we are not going to get members from the  
21 Minority assigned to conferences.

22 The Chairman. Could we avoid that discussion right  
23 now? [Laughter].

24 Senator Jeffords. No, I am not going to avoid it  
25 because it is very, very important on a bill like this,



1 having the House members disagreeing with what we are  
2 taking to conference. Even if we assure our good friends  
3 that they will be participants, and I, for one, want to  
4 do just that, it is funny.

5 When we do the exact opposite and steal from the  
6 trust funds and the highway trust funds to offset in the  
7 general fund, there is not this scream about using the  
8 money for something else.

9 Now we are doing the exact opposite here, or trying  
10 to remedy some of the faults that we had, and we are  
11 getting an awful lot of screaming and yelling from both  
12 sides of the aisle that we are not funding properly the  
13 highway bill and/or the transit portion. I think it is  
14 just not right that we are not consistent. We should be  
15 consistent.

16 If we are taking the monies that obviously we could  
17 have had had they not been sent to the general fund, and  
18 putting them back into the highway funds as they should  
19 be, I think that is correct and should be done that way.  
20 Thank you.

21 The Chairman. Senator Nickles, then Senator Kyl.

22 Senator Nickles. Mr. Chairman, this is more just  
23 for clarification. I mentioned that the President  
24 responded to my question. He said two things. He said,  
25 no increase in gasoline tax, and he said no general

1 revenues.

2 The way I was interpreting that, we were not going to  
3 add to the deficit. One could say that some of these  
4 funds are not related to highways and, therefore, are  
5 general revenues. So, I would think that would be  
6 legitimate. I just want to make sure I am accurate.

7 I also think that Mr. Prater suggested or mentioned  
8 that there is another revenue raiser or loophole closer  
9 that needs to be made, and that is that lease-back  
10 provision. That is about \$30 billion.

11 It might be a lot more legitimate than some we are  
12 looking at here. We ought to close that. That is a  
13 scandal that, frankly, needs to be closed before it gets  
14 more expensive. The more it happens, the more often it  
15 will happen.

16 The Chairman. We will do that. Do not forget, we  
17 put a November date on that. So, any of those things  
18 that take place after that November date will not be  
19 included in our legislation.

20 Senator Nickles. Well, one could question whether  
21 we should do it in this bill or do it in a subsequent  
22 bill. Maybe we should use it on FSC ETI. But I wanted  
23 to clarify. I was interpreting the President's remarks  
24 to say no deficit financing.

25 No increase in the deficit. I think is a legitimate

1 interpretation. But someone could also say some of these  
2 general revenue raisers are general revenue. He said no  
3 general revenue. He did not say everything had to be  
4 highway-specific. That is kind of ambiguous. Maybe we  
5 can have that clarified tomorrow when Secretary Snow  
6 testifies.

7 The Chairman. Senator Daschle, then Senator Kyl.

8 Senator Daschle. Mr. Chairman, I will be brief. I  
9 would say, first of all, I think we really set an example  
10 here, a model, for what I would hope would happen  
11 routinely around here. We are actually offsetting at 100  
12 percent the costs associated with this bill over the next  
13 six years.

14 We are now facing a deficit of something like \$600  
15 billion this coming year. We ought to have these same  
16 discussions as we look at the prospects of dealing with  
17 that deficit over the course of the next year. So, I  
18 applaud you. We may quibble about how we get there, but  
19 the fact is, this bill is paid for. I appreciate the  
20 leadership provided in making that happen.

21 Second, let me just say that I know that it was not  
22 without a great deal of difficulty that you faced  
23 addressing both highways, as well as transit in meeting  
24 your obligations and the goal of a 100 percent offset  
25 requirement here.

1           So, I appreciate the fact that you have that symmetry  
2 locked into this bill. That was not originally the  
3 design, and I am very pleased that the two leaders have  
4 taken it upon themselves to make that happen. I think it  
5 is another strength for this legislation.

6           Finally, let me just say, with respect to Senator  
7 Bunning, we are very desirous, very hopeful that we can  
8 go to conference with every bill. We ask for one  
9 assurance: that we are in the room when the conferences  
10 are held. That was not the case on Medicare, it was not  
11 the case on energy, it was not the case on the omnibus  
12 appropriations bill.

13           So, until we can be given that assurance, we are left  
14 with a couple of options. Either negotiate, as some of  
15 us are doing in the CARE Act, outside of conference. We  
16 did that successfully, of course, with the Forest Health  
17 bill. Once we reached an agreement, we had a conference  
18 and ultimately got the bill done.

19           Or in the case of Fair Credit Reporting, we got the  
20 assurance we were looking for. We went to conference,  
21 all Democrats, House and Senate, Republicans, House and  
22 Senate, were at the table. We negotiated and ultimately  
23 passed that legislation.

24           So, that is all we are asking. I do not think it is  
25 too much to ask. It is what we have been doing

1 traditionally in this institution, and we are going to  
2 insist that it be done in this session of Congress.

3 Senator Bunning. Mr. Chairman, I should be able to  
4 respond, at least as far as Medicare prescription drugs  
5 are concerned.

6 The Chairman. All right.

7 Senator Bunning. The two people seated, one on your  
8 left and one on your right, were in on every bit of  
9 legislation in conference that you had. The two people  
10 sitting right next to you. So, I can only speak for the  
11 Medicare prescription drug bill, that they did have an  
12 awful lot of input or we would not have passed the bill.

13 Senator Lott. Mr. Chairman?

14 The Chairman. After Senator Kyl speaks.

15 Senator Kyl. Thank you, Mr. Chairman.

16 I want to go back to the question that Senator  
17 Santorum raised, because I do not think that we got a  
18 straightforward answer. Senator Santorum's question  
19 essentially was, are the offsets that are provided here  
20 related to highway or transportation funding? The answer  
21 was, yes, they are.

22 Mr. Chairman, the words are related, but the monies  
23 are not. There is a big difference. The revenues that  
24 we would be taking from the general fund and putting into  
25 the Highway Trust Fund that have some relationship to the

1 Highway Trust Fund, like, for example, interest earned on  
2 its income, I think we would all agree are legitimate  
3 transfers of money from the general revenue to the  
4 Highway Trust Fund.

5 But there are two categories of words, not money,  
6 that I think are not legitimate transfers. The general  
7 subject matter is highways or trust fund, but there is no  
8 money involved.

9 There are credits and exemptions provided to ethanol,  
10 for example. That is money not collected by the U.S.  
11 Government. We have made a decision, a policy decision,  
12 not to collect 5.2 cents per gallon. All right. So we  
13 do not collect that money.

14 You cannot collect nothing and transfer that nothing  
15 to the trust fund and say that you have actually just  
16 transferred general revenue funding and it is a  
17 legitimate transfer because the general subject matter  
18 was ethanol, which is used to fuel things that drive on  
19 highways, and so forth.

20 Yes, the words are connected to the Highway Trust  
21 Fund, but there is no money there. So, the money is  
22 what? It is income taxes, it is other money that is  
23 raised from all Americans and paid into our general  
24 treasury. Therefore, let us not confuse this or try to  
25 confuse others and try to suggest that somehow or another

1 the money is connected to the highway fund. It is not.

2 The money is, purely, general tax revenues connected  
3 by the Treasury, put in the fund, and because we are  
4 short of money in the Highway Trust Fund, we want the  
5 general revenues to go into the Highway Trust Fund. But  
6 there is no connection of funding. It is only a  
7 connection in words.

8 Now, there are two categories of money here. One is  
9 the VTEC, or the 5.2 cents per gallon, and the other is  
10 the fuel refund mechanism. I think those two amounts of  
11 money are \$9 billion and \$8 billion, respectively.

12 At the informal meeting we had earlier, I thought  
13 there was a general agreement that these were revenues  
14 from the general fund that really did not have a  
15 connection to the trust fund. It might be less  
16 legitimate in that regard.

17 Now, there are four basic ways to pay for this bill.  
18 The first one is to limit the amount of spending to the  
19 amount of revenue, which seems to me to be the best  
20 choice. The second, is to spend to a higher level and  
21 raise taxes.

22 The third, is to spend to a higher level and just  
23 deficit fund it. The fourth, which we are all patting  
24 ourselves on the back for selecting here, is to spend to  
25 a higher level, but transfer money from the general fund.

1 I acknowledge that that is a better rationale than  
2 deficit spending or raising taxes. But I just want us to  
3 be sure and not confuse the fact that we are getting  
4 money that does not exist in any sense out of collections  
5 that have anything to do with highways. In fact, there  
6 are not any collections being made here. It is just  
7 purely general revenues from income taxes and other  
8 general revenue sources.

9 The Chairman. I now move to modify the Chairman's  
10 mark.

11 [No response]

12 The Chairman. Without objection, the Chairman's  
13 mark is modified.

14 We had 36 amendments filed. We have included several  
15 in the modifications. My understanding is that some will  
16 be withdrawn or would not be offered, and I thank members  
17 who have decided to do that.

18 Now we are ready for the amendments. I think Senator  
19 Conrad made indication to me.

20 Senator Lott. So we approved the modification by  
21 unanimous consent, right?

22 The Chairman. Yes. We have done that. Yes. Now  
23 we go to the amendment of the modified mark.

24 Senator Conrad?

25 Senator Conrad. Mr. Chairman and colleagues, I



1 would just say, the one thing that still jumps out at me  
2 is this transfer, a timing transfer of money from 2010  
3 and 2009, I do not think, is real money. It is just a  
4 timing difference. I think we would be far better off to  
5 pay for it.

6 I would offer an amendment that would pay for it by  
7 taking \$7.6 billion of Customs user's fees and \$3.8  
8 billion from previously passed Finance activity with  
9 respect to the JOBS bill, specifically Part F, 1 through  
10 14, a series of technical adjustments, and Part C,  
11 numbers 5 and 9. Five, is establish specific class lives  
12 for utility grading costs; 9 is to provide consistent  
13 amortization periods for intangibles to replace the money  
14 to the general fund.

15 That comes to a total of \$11.4 billion. It is \$11.2  
16 billion that is being moved in this timing transfer. I  
17 think at least then we could say that we have  
18 legitimately paid for what we have done.

19 Senator Lott. Mr. Chairman, would the Senator yield  
20 for a question about his amendment?

21 Senator Conrad. Yes.

22 Senator Lott. Now, this \$7 billion plus in Customs  
23 fees. Maybe the staff would have to help with that.  
24 What is that going to be collected on/from? Where are we  
25 going to come up with that money? Are these new Customs

1 fees that will be paid by people that get the benefits of  
2 Customs inspections or clearances?

3 Senator Conrad. Maybe we could ask the staff for  
4 their response on a technical basis. I would say, this  
5 is no new taxes.

6 Senator Lott. No new taxes. So what is it? Is it  
7 real?

8 Mr. Yin. I believe the current Customs fees expire  
9 on March 1 of 2005, so this would extend them.

10 Senator Lott. Is it only the current fees that  
11 would be extended on Customs' services?

12 Senator Conrad. That is correct. That is the  
13 intent of the amendment, to extend what we are already  
14 doing that otherwise lapses.

15 Senator Baucus. And if I understand, that would  
16 then earn additional revenues not now earned after the  
17 current expiration date.

18 Senator Nickles. That is correct.

19 Senator Breaux. Would the Senator yield?

20 Senator Conrad. Yes.

21 Senator Breaux. Where do those Custom fees go now?

22 Mr. Yin. Well, they are due to expire right now.

23 Senator Breaux. I am aware they have been going  
24 while they were in effect.

25 Mr. Yin. They would go into the general fund.

1           Senator Breaux.   And they do not go back to the  
2 Custom operations for inspection purposes and hiring  
3 personnel, et cetera?

4           Senator Kyl.   Mr. Chairman, I am answer that  
5 question.   The answer is, the money goes to the general  
6 fund and the amount that is collected is used as a guide  
7 by the Appropriations Committee here and budget in the  
8 administration as to what would be reimbursed to Customs.  
9 It is not an exact dollar-for-dollar, but they try to  
10 keep it relatively close.   But the money goes into the  
11 general fund.   It is not then transferred to Customs.

12          Senator Breaux.   I would just make the point that  
13 what will happen will be we will short-change the Custom  
14 inspections by the amount that we have taken from the  
15 Custom fees and put into this program.   It is money here,  
16 money there.   I mean, that is what we are doing.

17          The Chairman.   Could I ask the committee to think  
18 about what Senator Conrad is asking us to do and not find  
19 fault with his motivation?   You cannot find fault with  
20 that.

21          But what we have before us is a well-balanced bill  
22 that is going to be offset by the expenditures of the  
23 other three committees.   We wanted to be very careful in  
24 this legislation not to put additional money into the  
25 bill that would be there for people to find some way to

1 spend beyond what the committees have recommended.

2 So I think the effect of the Senator's amendment will  
3 be to raise extra billions, and that money will be spent  
4 when we get it out to the floor. Then at that point,  
5 this committee loses control of those funds. I think  
6 this committee, legitimately, has been very selfish of  
7 having control over the funds that are in the  
8 jurisdiction of this committee.

9 Senator Nickles. Mr. Chairman?

10 The Chairman. Senator Nickles?

11 Senator Nickles. Mr. Chairman, I want to say that I  
12 think the bill costs too much money. I do not think we  
13 can afford a 43 percent, or 42. some-odd percent increase  
14 in the highway bill. Senator Jeffords, Senator Enhoff,  
15 in the bill that is coming out of Mass Transit or the  
16 Housing Committee may come up with that much.

17 But this is a more legitimate way to pay for it than  
18 to say we are going to shift \$11.4 billion in corporate  
19 revenue from 2010 to 2009. That is a shell game. That  
20 is not defensible. We might as well say the bill is \$11  
21 billion short.

22 The proposal that Senator Conrad has is new money, as  
23 compared to present law. There is a distinction. We may  
24 or may not get around to passing other tax bills. We may  
25 or may not get around to closing some of the loopholes.

1 So, he is talking about \$10 billion, or \$9 billion,  
2 whatever the figure was that you had.

3 Senator Conrad. \$11.4 billion.

4 Senator Nickles. \$11.4 billion as compared to  
5 existing law. It is an increase. The one that we have  
6 before us is a shell game. I do not think it is  
7 defensible. I think we have credibility that we have to  
8 maintain.

9 Again, my preference would be for us to shave back  
10 the bill by \$11 billion. I do not think that is likely  
11 to prevail, so I am going to support the Conrad  
12 amendment.

13 The Chairman. Senator Baucus?

14 Senator Baucus. Mr. Chairman, the concern I have is  
15 that we really have not thought this through. This is a  
16 big amendment. It has just come up now, at this moment.  
17 The committee and the committee staff spent a long time  
18 trying to basically do what is right here and trying to  
19 anticipate all of the legitimate questions raised,  
20 namely, how to pay for the bill, and make sure that the  
21 revenue that currently goes to the general fund should  
22 not, namely, 5.2, the 2.5, et cetera, go to the trust  
23 fund, and then addressing the concern of, well, gee, we  
24 want to be deficit neutral.

25 That is money that previously went to the general

1 fund that is now going to go to the trust fund. We  
2 figure out a way to make it revenue neutral, like coming  
3 up with offsets which are extremely important.

4 Now, that is not directly a point to your point,  
5 Senator Conrad. But I just wanted to point out, these  
6 offsets, like tax shelters, the Enron shelter problems  
7 and so forth, these are not just offsets, this is good  
8 public policy.

9 So I want to make sure that we get these provisions  
10 passed because it is very good public policy to get them  
11 finally passed, even though we have had a hard time in  
12 getting them passed.

13 But to your point, Senator, you mentioned some other  
14 provisions in there totalling \$3 billion. I do not think  
15 our staff has had a chance to go through all of that to  
16 figure out what they are.

17 Senator Conrad. Those are things that we have  
18 previously passed out of this committee.

19 Senator Baucus. All right. But, still, we are in  
20 the context of this bill. It would be my hope, frankly,  
21 that this committee would pass this bill as is. The  
22 corporate provision makes all of us feel a little  
23 uncomfortable, no doubt about it.

24 But my guess is that we are going to deal with that,  
25 if not before the floor, certainly either on the floor or

1 in some way. I am pledged to try to find a way to deal  
2 with that because it is something that sticks out.

3 When I was briefed by my staff on this provision, I  
4 thought, wait a minute. I had the same reaction you did.  
5 I said, that is not right. We have got to figure out  
6 some other way. It is a shell game. I made the same  
7 points.

8 But, nevertheless, the whole context of where we are  
9 at this point, we have got to get this bill moving. We  
10 have got to get the highway bill to the floor. I think  
11 this is, on balance, a very good bill.

12 We can work with the corporate problem in some other  
13 way, but I do not want to get into a situation right here  
14 without thinking through all the consequences of the  
15 Senator's amendment of passing that amendment now.

16 So, I would hope, frankly, the Senator would either  
17 withdraw his amendment, or in the interest of getting  
18 this thing worked out when we go to the floor, and maybe  
19 on the floor. I think the Senator raises a very  
20 legitimate concern. But, nevertheless, I am concerned  
21 about doing something here that you would not want to do.

22 As I understand, the effect of the amendment, too, is  
23 we would have additional revenue with the amendment in  
24 subsequent years. That is just a huge, big, fat target  
25 on the floor. I just would rather we pass a bill that

1 does not have that effect.

2 We would not if we could pass this bill and work on  
3 ways to improve upon the bill, particularly the  
4 provisions that the Senator is concerned about, as I  
5 think all of us are concerned about, so we can proceed  
6 more quickly and expeditiously.

7 The Chairman. Would the Senator let us have a voice  
8 vote?

9 Senator Conrad. Let me just say this. If I had the  
10 commitment of the Chairman and the Ranking Member that,  
11 before we are going to get to the floor we are going to  
12 really pay for this bill, I would withhold.

13 Senator Baucus. If I might say, Senator, you have  
14 my commitment, but I do not know when the Leader is going  
15 to the floor with this bill, if it is today or tomorrow.  
16 Maybe today. But that sort of begs the question as to  
17 when the Finance Committee --

18 Senator Lott. But it will be around for a while, I  
19 would suspect.

20 Senator Baucus. It will be around for a couple of  
21 weeks.

22 Senator Lott. We have time to work on it.

23 Senator Baucus. Right. [Laughter].

24 Senator Conrad. I would just say, my own strong  
25 feeling is, with the deficits as they are, we have got a



1 record deficit. It has got a circumstances in which we  
2 all know the baby boomers are about to retire. None of  
3 this adds up.

4 I think this committee, of all committees, has got an  
5 obligation to send this bill out of here paid for. The  
6 truth is, it is not. My amendment does pay for it and I  
7 would offer it to my colleagues. I think we ought to  
8 vote, if there is not a commitment.

9 Senator Baucus. I pledge to my good friend from  
10 North Dakota that, certainly over the period when the  
11 bill is on the floor, to try to figure out a way to do  
12 this.

13 Senator Conrad. And would the Chairman also commit  
14 to that or do we need to vote?

15 The Chairman. I am sorry. I was being briefed by  
16 staff and I did not hear the comment.

17 Senator Conrad. Well, I offered to withhold if  
18 there was a commitment from the Chairman and Ranking  
19 Member to pay for this bill before we vote on the floor.  
20 If there is not that commitment, then I am going to offer  
21 this amendment and vote, because I think we have got an  
22 obligation and responsibility in this committee to pay  
23 for the things that we send out of here.

24 We have got a deficit that is a record and we have  
25 got a fiscal circumstances that, to this Senator, is

1 alarming. So, I think we have got an obligation to pay  
2 for this and I have offered a way to pay for it.

3 Now, if there is a better way, if the Chairman and  
4 Ranking Member would commit to me that we find another  
5 way, but that there is a clear commitment that we pay for  
6 it -- and I mean really pay for it. I do not mean this  
7 funny money financing where we just transfer money around  
8 from year to year. That is not paying for it.

9 The Chairman. The answer to your question is yes.  
10 Would you withdraw your amendment then?

11 Senator Conrad. I would, on that basis. I would  
12 withdraw because of my esteem for the Chairman and  
13 Ranking Member. Their word has always been good and I  
14 would certainly take it.

15 The Chairman. Senator Breaux?

16 Senator Breaux. As a retiring member, how much  
17 would we have to increase the gas tax to make up the  
18 difference? [Laughter].

19 Ms. Levy. One cent will bring in a billion dollars  
20 a year. So if we need \$35 billion under this --

21 Senator Conrad. No. On this amendment, we are  
22 talking about \$11.4 billion here. Two cents. Two cents  
23 for the gas tax, is the answer.

24 Senator Nickles. If you took everything else that  
25 is proposed--correct me if I am wrong--and then dropped

1 the movement between 2009 and 2010, you would be talking  
2 about two cents. Is that correct?

3 Ms. Levy. Yes.

4 The Chairman. Is that the end of the amendments  
5 now, so I can vote on the bill?

6 Senator Breaux. Probably better than my suggestion.

7 The Chairman. All right.

8 Senator Nickles. Mr. Chairman, you and Senator  
9 Baucus have basically agreed, by the time we come to the  
10 floor, you will have a manager's amendment that will have  
11 the bill paid for and it will not be a transfer between  
12 2009 and 2010?

13 Senator Baucus. And if I might ask, before we leave  
14 the floor. We are already on the bill. We are voting at  
15 5:45, I think.

16 Senator Nickles. I understand. But you have made a  
17 commitment that you are going to try to pay for the bill  
18 without the funny money.

19 Senator Baucus. Absolutely. Yes. Right. Well,  
20 the corporate shift.

21 Senator Nickles. Yes.

22 Senator Kyl. Mr. Chairman?

23 The Chairman. Senator Kyl?

24 Senator Kyl. I have some amendments. Would this be  
25 an appropriate time to at least offer a couple of them?

1           The Chairman.   All right.  It is appropriate right  
2 now.

3           Senator Kyl.    All right.

4           Senator Bunning.  Did we withdraw the amendment, or  
5 what did we do?

6           The Chairman.  The amendments by the Senator from  
7 North Dakota is withdrawn.

8           Senator Bunning.  Thank you.

9           The Chairman.  Senator Kyl?

10          Senator Kyl.  Mr. Chairman, my amendment goes along  
11 with the explanation I gave before.  It would reduce by  
12 \$17 billion the amount of the bill to \$214 billion in  
13 highway projects rather than the \$231 billion in the  
14 Chairman's mark, all paid for by legitimate funds that  
15 are transferred from the general fund to the Highway  
16 Trust Fund, such as the interest earned on the Highway  
17 Trust Fund money.

18          The two things that would exempt are the 5.2 gasohol  
19 tax that is not collected by anybody and the fuel refund  
20 mechanism whereby we do not collect the tax today.  This  
21 would collect the tax, rebate it back to the taxpayer,  
22 and then pretend that we still had the money to send to  
23 the Highway Trust Fund, taking that money out of the  
24 general revenues.  So, that is the effect of the  
25 amendment.

1           The Chairman.    I would ask my colleagues to oppose  
2 this amendment because, as I indicated, this committee,  
3 as trustee for the trust funds, have an obligation.  But  
4 it is only part of the obligation in regard to this  
5 overall four committees working together to make sure  
6 that we have an adequately funded and compromised piece  
7 of legislation that can move forward.  This would upset  
8 that balance.  So, now to vote on the Kyl amendment.

9           Senator Nickles.   Mr. Chairman?

10          Senator Santorum.   Mr. Chairman?

11          The Chairman.    All right.  I did not know you were  
12 interested in the Kyl amendment.

13          Senator Santorum?

14          Senator Santorum.   Thank you, Mr. Chairman.  Mr.  
15 Chairman, I am going to support the Kyl amendment.  I  
16 appreciate him pointing out that the answer that was  
17 given to me by staff was incorrect, that the money here  
18 is not money that is otherwise coming in in highway taxes  
19 and we are just simply replacing it now with other funds.

20                 This is money that is not coming in at all or it is  
21 coming in and being credited right back out, and we are  
22 pretending the money is still here.  That is not a tax on  
23 any kind of transportation-oriented activity that is  
24 miscredited.

25                 This is properly credited back to the person who was

1 originally taxed, and then we pretend that the money is  
2 still here and we credit it to the Highway Trust Fund.  
3 That is another shell game.

4 We are purely taking general funds and sending it  
5 over to the Highway Trust Fund and we are using other  
6 taxes outside of the area of transportation to fund that  
7 general fund transfer. That is not what we should be  
8 doing. If we are going to stay with the integrity of the  
9 system as we have had it to date, users have paid for the  
10 funds allocated for the roads.

11 If we want more money for roads, then let us find out  
12 some way to tax users, not somebody else for using the  
13 highways that we have, or the transit systems that we  
14 have.

15 That is, I think, what Senator Kyl is trying to get  
16 at here, that we have gotten away from the idea of  
17 transportation paying its own way. I agree with Senator  
18 Bunning that for a long time transportation over-paid and  
19 we were using it to pay for other things.

20 I, for one, complained about it, you for two, and I  
21 know many others complained about it and we finally fixed  
22 it. Now, we do not need to make one bad thing that  
23 happened for years and turn it on its head and now do the  
24 other sin in reverse. That is what we are about to do  
25 here. It is wrong.

1 I am not for increases in taxes, but to me it is a  
2 much more honest way of dealing with this. Whether it is  
3 a gas tax or whether it is an increase in an excise tax,  
4 it is a much more honest way to deal with the general  
5 public than the games we are playing here today, and I  
6 support the Kyl amendment.

7 The Chairman. Ms. Levy, could you respond to that?

8 Ms. Paris. Yes, Mr. Chairman. The two particular  
9 revenue raisers that both Senators referred to were the  
10 5.2 gasohol and the amendment of the fuel refund  
11 mechanisms, those two lines, sirs.

12 Currently, the 5.2 difference between the tax on  
13 gasoline and the tax on gasohol is lost. It is a tax not  
14 paid. The changes--and Ms. Paris can address this more  
15 fully--that are being made in this proposal, the tax  
16 actually is paid.

17 Senator Santorum. But it is then credited back.

18 Ms. Paris. Only upon a claim of refund with proof  
19 of the number of gallons.

20 Senator Santorum. So what you are telling me is  
21 there is some component of fraud which we are going to  
22 pick up. Great. But the bottom line is, the bulk of the  
23 money we are talking about here is credited back.

24 Correct?

25 Ms. Paris. That the refund would be stood by the

1 general fund. Yes, that is correct. Much less Section  
2 45 --

3 Senator Santorum. But we are pretending that money  
4 still is here and we are crediting it to the Highway  
5 Trust Fund, are we not?

6 Ms. Paris. The full amount is 18.4 cents. Yes,  
7 sir.

8 Senator Santorum. So what Senator Kyl is saying is  
9 correct. Is that not right?

10 Ms. Paris. That is correct. The general fund will  
11 stand the cost of the credit for anything having to do  
12 with --

13 Senator Santorum. So the general fund is going to  
14 receive 5.2 cents, pay back the people who paid the 5.2  
15 cents, and then pay another 5.2 cents over, so they are  
16 going to pay twice for the privilege of collecting that  
17 tax.

18 Ms. Paris. No, sir. The full amount, the 18.4  
19 cents and the 24.4, will be credited and will be paid to  
20 the Highway Trust Fund. If and when a refund is filed,  
21 it will be paid from the general fund, much like Section  
22 45, when credit is paid from the general fund.

23 The Chairman. I would like to vote. All right.

24 Senator Daschle. Mr. Chairman?

25 The Chairman. All right. We will wait and not



1 vote.

2 Senator Daschle?

3 Senator Daschle. I just want to clarify. Is that  
4 practice any different under this bill than current law?

5 Ms. Paris. Yes, sir. Under current law, it is an  
6 exemption, a true exemption. The only money that is ever  
7 sent to the U.S. Government is 13.2 cents. So, we never  
8 receive the money under current law. The 13.2 cents is  
9 all that is received. Under the proposal, 18.4 cents  
10 will be due and owing upon the purchase. So, every  
11 gallon, no matter what is in it, will pay the full amount  
12 of the tax.

13 Senator Daschle. The mechanism is different, but  
14 the ultimate effect on the trust fund is not. Is that  
15 not correct?

16 Ms. Paris. The full amount of the 18.4 cents would  
17 be paid into the trust fund. If a refund was filed or an  
18 excise tax credit was claimed, then that would come out  
19 of the general fund.

20 Senator Daschle. So you could argue, from the point  
21 of view of the Senator from Pennsylvania, this is an  
22 improvement over current law.

23 Ms. Paris. We think it is an improvement over  
24 current law. Yes, sir.

25 Senator Santorum. Mr. Chairman, let me respond to

1 that. I just want to make sure. Right now, only a  
2 portion of the gas tax is being sent to the trust fund.  
3 Under this change, the entire amount, 18.4, is sent to  
4 the trust fund. So, we are collecting more tax. Right.

5 But that additional amount that is now going to be  
6 paid is, in fact, credited back to the person who pays  
7 it. So the net effect, other than picking up fraud, is  
8 the same, except that now the general fund is having to  
9 pay over the amount that was credited back. Is that my  
10 understanding?

11 Ms. Paris. Only with a small deviation. The  
12 general fund never receives anything greater than 13.2  
13 cents under current law. What we are doing is making the  
14 Highway Trust Fund receive the full 18.4. So I think you  
15 started the --

16 Senator Santorum. But the additional amount that is  
17 being received is credited back.

18 Ms. Paris. Correct.

19 Ms. Levy. Senator, I think I might have something  
20 that might clear this up for you. The theory behind  
21 making some of these changes is a question of equity, if  
22 you will. We never took issue with the policies behind  
23 any of these exemptions or subsidies. That was not the  
24 task at hand. The task at hand was to look at the  
25 subsidies.

1           We realized that those exemptions or subsidies had  
2 nothing to do with highway policy. The wear and tear on  
3 the road is the same regardless of what fuel propels the  
4 vehicle on the road, or whether the taxes have been paid.

5           So the question became, should it be the trust fund  
6 or the general fund that should bear the burden, if you  
7 will, of these subsidies? For the leadership of the  
8 committee, the Senator that I work for, we felt that  
9 these are truly not highway policy reasons for subsidies  
10 and that, inappropriately, the trust fund has been  
11 bearing the burden of these when, in fact, the general  
12 fund should have been. That is what this proposal is  
13 about.

14          The Chairman. I have these members that want the  
15 floor: Nickles, Graham, and Baucus.

16          Senator Nickles. Mr. Chairman?

17          The Chairman. Yes?

18          Senator Nickles. I ask staff for clarification.  
19 Senator Kyl's amendment--correct me if I am wrong--says  
20 that we would reduce the funding in this bill for highway  
21 projects. Can we do that? Is that not subject to the  
22 jurisdiction of the Environment and Public Works?

23          I happen to share the sentiments expressed by the  
24 Senator from Arizona, expressed much better by him than  
25 me, exactly. But I am not sure that we have the

1 authority to cut the spending amounts under this bill.

2 Is that correct?

3 Ms. Levy. Yes, you do. This committee gives  
4 expenditure authority to the committees of authorization.

5 Senator Nickles. So we can cut the amount. Well, I  
6 wish to be added as a co-sponsor of the amendment.

7 Let me ask you another question. If we do not cut  
8 the spending authority and we do not raise sufficient  
9 money, and so we under-fund the trust fund for the  
10 obligations that Congress is setting out, what happens?

11 Ms. Levy. If the bill still goes to the floor, then  
12 you have a bill that is not completely paid for.

13 Senator Nickles. So my point is, so we do that, we  
14 authorize spending at \$50 billion more than we have  
15 revenue coming in. So what happens at some point down  
16 the road?

17 Ms. Levy. Congress will need to make a decision of  
18 whether it wants to make up that delta or cut  
19 apportionments to States from the underlying bill.

20 Senator Nickles. So you could have contract  
21 authority that could not be paid. You could have  
22 contractors that might not be paid. You might have the  
23 highway mass transit obligations stop in their tracks  
24 because there would not be sufficient funds to pay the  
25 contractors. Is that correct?

1 Ms. Levy. Many people would be upset. Yes.

2 Senator Nickles. Am I correct? I am serious about  
3 this.

4 Ms. Levy. Yes. So am I. Yes.

5 Senator Nickles. Because Congress is marching  
6 towards doing this. I happen to think, unless the  
7 Chairman and Ranking Member fix this deal on corporate  
8 trading in one month, or moving the estimated payments, I  
9 think that is going to happen. So, I think it is a very  
10 serious amendment. I compliment Senator Kyl for his  
11 amendment and I would hope that it would be adopted.

12 The Chairman. Senator Graham?

13 Senator Graham. I agree with half of what Senator  
14 Kyl has stated. That is, we ought to be honest with the  
15 American people. If we are going to propose this level  
16 of support of our transportation system, we, not our  
17 grandchildren, ought to pay for it.

18 I disagree on the second part, however. That is,  
19 what is the appropriate level? I started six years ago  
20 with T-21 saying that the appropriate level of spending  
21 ought to be at least what it would require to keep the  
22 system as it is, to not allow it to further degrade.

23 The bill that we passed lived up to my expectations  
24 by failing to do that. These figures are according to  
25 the U.S. Department of Transportation's "Conditions and

1 Performance Report," which state that since the passage  
2 of T-21, the highway system has degraded by 6 percent.  
3 Since the passage of T-21, 29 percent of our Nation's  
4 bridges are considered structurally deficient.

5 Since the passage of T-21, we have reached a point,  
6 according to the Texas Transportation Institute--and I  
7 might state that Senator Frist cited these same  
8 statistics on the floor earlier today--we have increased  
9 the number of cost based on congestion last year alone by  
10 \$4.5 billion, and the estimate is that, by the year 2009,  
11 we will have increased the cost of congestion by \$90  
12 billion.

13 We have a lot of deficits in this country. We have a  
14 trade deficit which we get a clear number on every month.  
15 We have a fiscal deficit upon which we get a number every  
16 month. What we do not get a report card for every month  
17 is the deficit in our infrastructure that is eventually  
18 going to be a heavy drag on our overall national  
19 productivity.

20 I think this bill, like T-21, will guarantee that our  
21 system will get worse, but it just reduces the amount of  
22 that worsening. So I am going to vote against the Kyl  
23 amendment to reduce the status of our surface  
24 transportation system, which his amendment would  
25 guarantee would happen, as will with the passage of this

1 bill, just at somewhat of a lesser amount, and then join  
2 him in doing whatever is required to be honest with a  
3 level of support for transportation in this country.

4 The Chairman. Senator Baucus? Then we will vote on  
5 the Kyl amendment.

6 Senator Baucus. Thank you, Mr. Chairman. This is  
7 just an informational request. By how much would the  
8 outlays for the highway bill be decreased if the Kyl  
9 amendment were to pass? By how much, and from what level  
10 to what level?

11 Mr. Yin. I believe it is \$17 billion. It would go  
12 down from \$321 billion to \$214 billion.

13 Senator Baucus. Because the information given to me  
14 was that it goes to \$196 billion.

15 Senator Kyl. No. Mr. Chairman, Mr. Yin is correct.  
16 Many of the offsets that we have discussed before, I  
17 think, are legitimate and are included. The only two  
18 that are not are the ones indicated, the 8 and the 9, and  
19 they total 17.

20 Senator Baucus. I see.

21 Senator Kyl. Subtract that, and you get the amount.

22 Senator Baucus. All right. So the effect is  
23 reduced from \$231 billion to \$214 billion?

24 Mr. Yin. Down to \$214 billion.

25 Senator Baucus. We reduce the highway bill by that

1 amount.

2 The Chairman. Senator Kyl wants closing remarks.

3 Senator Kyl. Just a closing comment. I respect  
4 what Senator Graham said. It seems to me we have to be  
5 very careful we do not create a very dangerous precedent  
6 here of funding these projects out of general revenues.  
7 Once we begin doing that, there is no end to the appetite  
8 for these projects and there will be no constraint in the  
9 form of a precedent and a policy that we previously  
10 followed.

11 That is why I tried to distinguish between those  
12 things that were legitimate revenue raisers that should  
13 be put in the Highway Trust Fund versus new general  
14 revenue spending. That is the line that I was trying to  
15 accomplish here.

16 The Chairman. On the Kyl amendment, those who are  
17 in favor say aye.

18 [A chorus of ayes]

19 The Chairman. Those opposed, say no.

20 [A chorus of nays]

21 The Chairman. The nays seem to have it. The nays  
22 do have it. The Kyl amendment is defeated.

23 Senator Kyl had another amendment.

24 Senator Kyl. Yes. Thank you, Mr. Chairman. I  
25 think I gave my amendments to Senator Nickles.



1           Mr. Chairman, let me just offer this amendment. I am  
2 not sure that it needs any debate in view of the last  
3 vote, but I would like to offer the amendment and take a  
4 vote. I would not require a roll call on this, either.

5           But that is a substitute for your mark that would  
6 continue for a period of one year, to extend the  
7 authority through February 28, 2005 for the spending for  
8 our highway purposes.

9           The Chairman. Those in favor of the amendment, say  
10 aye.

11           [A chorus of ayes]

12           The Chairman. Those opposed, say no.

13           [A chorus of nays]

14           The Chairman. The nays seem to have it. The nays  
15 do have it. The amendment is defeated.

16           Senator Kyl. While I am on a roll, could I just  
17 keep going here? [Laughter].

18           The Chairman. Do you have another amendment you  
19 want to offer?

20           Senator Kyl. I have three other amendments. I will  
21 be very brief. I have been brief on this one.

22           The Chairman. All right. Go ahead.

23           Senator Kyl. This is my Amendment Number 4 that  
24 would repeal the 5.2 cent per gallon ethanol exemption.  
25 [Laughter]. And I will not talk on it if you will not.

1 [Laughter].

2 Senator Nickles. Did you lose your voice?

3 The Chairman. I think I am going to take his offer  
4 up.

5 Those in favor, say aye.

6 [A chorus of ayes]

7 The Chairman. Those opposed, say no.

8 [A chorus of nays]

9 The Chairman. The nays seem to have it. The  
10 amendment is defeated.

11 Senator Kyl. Mr. Chairman, I have one now I hope  
12 that you will accept. It is my Amendment Number 5, and I  
13 want to modify it. This would have, in its original  
14 form, strike the biodiesel fuel income tax credit.

15 Rather than doing that, I propose to see unanimous  
16 consent to modify the amendment to simply request a GAO  
17 study of the tax credit, should it become law. I can  
18 describe the purpose of the study if you would like for  
19 me to do that.

20 Senator Nickles. Mr. Chairman? Mr. Chairman, could  
21 I be heard on his amendment?

22 The Chairman. You can be heard on it, but I was  
23 going to accept it.

24 Senator Bunning. Wait a minute.

25 Senator Nickles. I would hope he would do more. I

1 am embarrassed that the bill has before it, and the  
2 energy bill has before it, a dollar tax credit on  
3 biodiesel. Now, gasoline only costs \$1.50, \$1.60, \$1.70,  
4 \$1.80, and this is a \$1.00 tax credit. That is double,  
5 Mr. Chairman, what we do on ethanol.

6 Almost double. I know there is not a lot of money  
7 involved, but the principle of it is absurd. I would  
8 hope that the credit that we use for biodiesel does not  
9 exceed that for ethanol. Enough is enough. A dollar a  
10 gallon credit is absolutely absurd.

11 So, Mr. Chairman, I would hope that we would do more  
12 than limit the credit to that provided for ethanol or  
13 other sources. When somebody put this in, I thought  
14 maybe they were not paying a lot of attention.

15 Senator Bunning. Mr. Chairman?

16 The Chairman. We have the amendment.

17 Senator Bunning. Mr. Chairman?

18 The Chairman. Yes, sir?

19 Senator Bunning. I would like to be heard on the  
20 amendment.

21 The Chairman. You can be heard right now.

22 Senator Bunning. Thank you very much. I oppose the  
23 Kyl amendment to change or modify the striking. I have  
24 worked hard, very hard, to get some kind of biodiesel tax  
25 credit in the bill and I am very glad that there is

1 something in the bill. We, in Kentucky, have a large  
2 amount of soybean growers and biodiesel manufacturers who  
3 are manufacturing the fuel.

4 This country needs to develop more alternative fuels,  
5 not less. We have got to change our approach to buying  
6 foreign oil as the only alternative to alleviating our  
7 dependency. So, alternative fuels are darned important  
8 to the United States of America.

9 While I do not believe that the provisions in the  
10 mark are perfect, I think they go a long way to helping  
11 encourage the use of biodiesel as an alternative fuel and  
12 I am against the Kyl amendment.

13 Senator Lincoln. Mr. Chairman?

14 The Chairman. The Kyl amendment, Senator from  
15 Kentucky, asks for a GAO study. I was going to accept  
16 that. He does not strike it out, as Senator Nickles  
17 indicated he wanted him to.

18 Senator Kyl. I had asked unanimous consent to amend  
19 it to not do what you do not want.

20 Senator Bunning. I am very sorry. Then I will not  
21 object to a study. I would object to the changes in the  
22 tax. Thank you.

23 Senator Lincoln. Mr. Chairman?

24 Senator Nickles. Mr. Chairman, I have no objection  
25 to voting on the Kyl amendment before I express my

1 outrage over this provision. [Laughter]

2 The Chairman. All right.

3 Senator Lincoln. Mr. Chairman? Mr. Chairman?

4 The Chairman. Any objection?

5 Senator Lincoln. Mr. Chairman?

6 The Chairman. Yes?

7 Senator Lincoln. Yes. I would like to ask what the  
8 cost of the GAO study is, and are we going to expand it  
9 to all the other subsidies that go to all other energy-  
10 producing products.

11 The Chairman. Well, his amendment just goes to the  
12 biodiesel provisions, so it would not extend to any  
13 others. Also, I do not know that there is any way that  
14 we know exactly what cost is.

15 Senator Kyl. The Chairman is correct. It only  
16 relates to this provision, and I do not know the cost.

17 Senator Nickles. I think it would be great to study  
18 all these fuel subsidies.

19 Senator Lincoln. There are a lot of them out there.

20 The Chairman. Senator from Arkansas, since you  
21 favor biodiesel so much, I hope you will not let Senator  
22 Nickles carry on. [Laughter].

23 Senator Lincoln. Well, I hope he does not. I  
24 absolutely disagree with what Senator Kyl is doing, but I  
25 just wanted to make sure that we realize that there is a

1 cost involved.

2 The Chairman. Is there any objection to my  
3 accepting the Kyl amendment?

4 Senator Smith. Mr. Chairman? I do not object, but  
5 I do think it is important to say that part of this whole  
6 biodiesel issue is solving a very serious environmental  
7 problem. It is just not a fuel problem, but tremendous  
8 amounts of waste are produced in rural America and we  
9 have got to figure out what to do with all of this.

10 You have got farmers, you have got producers subject  
11 to tremendous fines with no outlets, no way to fix it.  
12 We are imposing these mandates and we are just saying  
13 here, yes, there is a cost, but also a benefit. But we  
14 need to talk about the environmental benefit because it  
15 is very considerable and it is worth paying for.

16 The Chairman. Senator Daschle?

17 Senator Daschle. I am just going to weigh in for  
18 just a second to say there is another matter, too. I  
19 think Senator Smith has put his finger on a very  
20 important matter.

21 But there is a substantial reduction in the cost of  
22 subsidization for soybean production as a result of this  
23 as well. You find new markets and you reduce the  
24 governmental subsidy that goes to stabilize the price.  
25 That cost has to be allocated in the overall cost of the

1 subsidy as well. So, there is that factor as well that  
2 needs to be represented, and I hope the GAO will do that.

3 Senator Nickles. Mr. Chairman?

4 Senator Lincoln. Mr. Chairman?

5 Senator Smith. This will be a very rosy report.

6 Senator Nickles. Mr. Chairman?

7 The Chairman. Senator Nickles.

8 Senator Lincoln. Mr. Chairman?

9 The Chairman. Then I would like the indulgence to  
10 be able to vote on this bill.

11 Senator Nickles. Mr. Chairman, I did file an  
12 amendment to strike the biodiesel or to reduce the  
13 subsidy to no more than ethanol, thinking that with your  
14 very strong support for ethanol, you would hate to double  
15 the subsidy for another possible contender.

16 But, after listening to the very convincing arguments  
17 by Senators Bunning, Smith, Daschle and others, maybe I  
18 should amend it to make the tax credit \$2 per barrel.  
19 But I will not. I will withdraw the amendment.

20 Senator Bunning. Accepted.

21 Senator Lincoln. Mr. Chairman?

22 The Chairman. Senator Lincoln?

23 Senator Lincoln. Can I simply ask, my hope is that  
24 we would also discuss--if you want to go ahead and take  
25 this amendment--the scope of the study and what

1 specifically we are asking GAO to study as well. I would  
2 certainly like to be able to have some input into that  
3 and what Senator Kyl is asking.

4 The Chairman. I will be very happy to work with you  
5 to make sure that it is a well-focused study.

6 Senator Lincoln. Thank you, Mr. Chairman.

7 Senator Nickles. And expanded to include ethanol,  
8 biodiesel?

9 The Chairman. A well- and narrowly-focused study.  
10 [Laughter]. The Kyl amendment is adopted.

11 Now we go to final passage. I now ask that the  
12 Chairman's mark, as amended, be adopted.

13 [No response]

14 The Chairman. Without objection, so ordered.

15 Senator Kyl. Mr. Chairman? I had filed two other  
16 amendments.

17 The Chairman. Oh.

18 Senator Kyl. I am willing to defer them for the  
19 floor. Obviously you want to move this forward, and I  
20 do, too. But there is an amendment on a very unrelated  
21 provision having to do with taxing the components of  
22 arrows that are made abroad and increasing the tax on  
23 components of arrows used, as in bows and arrows, which  
24 seems to me has no place in this bill. I would like to  
25 strike the addition of that provision. It is stated as



1 my Amendment Number 2.

2 The Chairman. All right. The Senator from Utah  
3 wants to speak on that.

4 Senator Hatch. I am very much opposed to that, to  
5 striking it. I do not blame Senator Kyl for pushing it,  
6 because he has a manufacturer in his State that imports  
7 arrows. Those offshore companies get to send their  
8 arrows in here free of charge.

9 Our domestic companies have to pay an excise tax, so  
10 we are not competitive. So, thousands of jobs are going  
11 to move overseas if we do not do what we have in this  
12 bill. We have passed this, I think, three times in the  
13 House, a couple of times in the Senate.

14 I do not blame the Senator. Look, what he would like  
15 to do with his amendment is just strike the tax for our  
16 domestic producers. I could go along with that, except  
17 for one thing. The domestic producers want to pay the  
18 tax because it goes into conservation that helps bow and  
19 arrow hunters. So, they would just as soon pay the tax.  
20 But we should not give an unfair advantage to those  
21 offshore companies, and I hope that we will vote against  
22 this.

23 Senator Daschle. Mr. Chairman?

24 The Chairman. The Senator from South Dakota.

25 Senator Daschle. I also want to weigh in. I think

1 Senator Hatch is exactly right. This is a jobs issue.  
2 It is very critical to many parts of the State in the  
3 west. This levels the playing field. It does not give  
4 an advantage to the Chinese. That is all we are asking.  
5 Let us ensure that our manufacturers have the same  
6 opportunity.

7 Ultimately, the bottom line is, while not a lot of  
8 jobs, when you are looking at the dramatic loss of jobs  
9 that we have experienced, we have got to find as many  
10 ways with which to ensure that the ones that are still  
11 here can stay here.

12 That is what this legislation does. As he said, this  
13 has been passed now a couple of times in the committee,  
14 several times in the House. It deserves our support, and  
15 I would hope that we would defeat the Kyl amendment.

16 The Chairman. Those in favor of Senator Kyl's  
17 amendment, say aye.

18 [A chorus of ayes]

19 The Chairman. Those opposed, say no.

20 [No response]

21 The Chairman. The nays seem to have it, and do have  
22 it. The Kyl amendment is defeated.

23 Senator Nickles. Mr. Chairman?

24 The Chairman. Do you have an amendment? I should  
25 recognize Senator Breaux, first, then I will come to you.

1 Senator Breaux?

2 Senator Breaux. I was just going to ask a more  
3 generic question.

4 Senator Nickles. I was just going to ask a very  
5 quick question. I think Senator Daschle alluded to the  
6 fact, and maybe the staff did, that we have paid for the  
7 mass transit. The figures are not quite adding up. The  
8 mass transit portion was \$31.8 billion, and you said you  
9 raised a couple.

10 I do not see how you raised \$2 billion in interest  
11 out of a \$4 billion fund. That is a pretty good interest  
12 rate of return. That gives you, you estimate, a total of  
13 \$36 billion. I thought that the Banking Committee wanted  
14 \$56 billion. I am assuming that is BA or contract  
15 authority, and not outlays. What kind of outlays did  
16 they need on \$56 billion?

17 Ms. Levy. This committee is only concerned with  
18 what comes out of the trust fund, the Mass Transit  
19 account of the trust fund. Any other outlays they need  
20 beyond the \$36.6 billion that this committee can provide  
21 from the Mass Transit account will need to be looked for  
22 from the general fund. It is not our jurisdiction.

23 Senator Nickles. Try to answer my question, though.

24 Ms. Levy. Sorry.

25 Senator Nickles. Of the \$56 billion that is assumed

1 in contract authority, how much is outlays and how much  
2 short are we of that amount?

3 Ms. Levy. I believe outlays are somewhere in the  
4 \$46 billion range. The Banking Committee has not marked  
5 up yet, so it is hard to be specific.

6 Senator Nickles. I understand. But if they did  
7 mark up \$56 billion, if their outlays were at \$46  
8 billion, then we are basically about \$10 billion short.  
9 I was thinking we were \$20 billion short, at least, on  
10 BA. But on outlays, we are about \$10 billion short?

11 Ms. Levy. From the numbers I have seen. But,  
12 again, they have not marked up, so the numbers I have  
13 seen were just estimates. We cannot know until they mark  
14 up. I cannot answer that question.

15 Senator Nickles. I understand. When they finish, I  
16 would appreciate staff giving us that information. I do  
17 not think we paid for the mass transit portion, so I  
18 think we have deficit financing for mass transit. They  
19 would like for us to make up the difference in  
20 appropriated accounts. I do not think we will have that.  
21 That is going to be very difficult to do, I guess, is the  
22 way I would put it.

23 The Chairman. Before I go to Senator Breaux, I  
24 think Senator Jeffords has something on this point.

25 Senator Jeffords. No. Actually, it is another

1 point.

2 The Chairman. Well, go ahead, as long as I have  
3 called on you.

4 Senator Jeffords. We offered amendments to staff,  
5 which were accepted by staff. I presume those are  
6 included?

7 The Chairman. There are several amendments that are  
8 in the mark. But is Senator Jeffords' in the mark?

9 Ms. Paris. Mr. Chairman, his amendment was included  
10 in the mark, but we need authorization to clarify that  
11 the highway use tax evasion projects would be included  
12 and clarified. So, there was a line missing from our  
13 modification. We just need authority to do that.

14 The Chairman. Yes. I was going to call upon you to  
15 give some clarification of the expenditure purposes as  
16 well. We need to do that before we vote.

17 Senator Breaux?

18 Senator Breaux. Mr. Chairman, the rumor, I think,  
19 that has been out there is that when the highway bill is  
20 debated on the floor, that it will be an effort by some  
21 to add the energy tax measures that this committee had  
22 passed.

23 I think the conference on the energy bill had tax  
24 incentives for the energy bill of about \$23 billion, or  
25 somewhere in that neighborhood. I am just wondering if

1 the Chairman or the Ranking Member can give us any  
2 explanation.

3 I mean, what is the position of this committee going  
4 to be? I mean, if that is going to happen, I kind of  
5 felt that the committee that wrote those provisions  
6 should be involved in determining what provisions of an  
7 energy tax bill are going to be added to this bill on the  
8 Senate floor as opposed to someone who perhaps is not  
9 going through all the hearings and is not familiar with  
10 what this committee did on the energy tax provisions,  
11 having them added on the floor as opposed to doing it  
12 here in this committee with the members who actually  
13 wrote those provisions.

14 The Chairman. I have had some discussion. I do not  
15 think there has been any conclusion. But it has  
16 generally gone along the lines of including the  
17 provisions of our bill.

18 There has been some suggestion to make it revenue  
19 neutral, or less subject to a point of order by some of  
20 the things that were put in for the House on transitional  
21 payments for MTEB, and also some coastal waters issues,  
22 that those would be pared back some.

23 There were some requests on the part of the House  
24 that we would pare back some things in regard to the tax  
25 issues. But in my conversations with Senator Domenici,

1 he seems to be very strong that the work of the Senate  
2 Finance Committee helps get the energy bill passed for  
3 the most part, and, as far as I can tell, not much, if  
4 any, modification.

5 Senator Nickles. Would the Senator yield?

6 Senator Thomas. Mr. Chairman?

7 The Chairman. Yes, I will yield.

8 Senator Nickles. Just to give a little  
9 clarification from some of the discussion I have had,  
10 some people discussed taking pieces of the bill that we  
11 passed and trying to put it on the energy bill.

12 I have expressed my strong dislike of that approach  
13 and thinking, if we are going to do part of the energy  
14 bill, we are going to do a more comprehensive energy  
15 bill, hopefully one that will not be as expensive as what  
16 we passed last year because budget points of order were  
17 made against it, and it would bog down the highway bill  
18 as well.

19 But if people are going to do part of the energy  
20 bill, we are going to do more than part of it, and  
21 hopefully a more comprehensive bill, but one that is more  
22 frugal as well so budget points of order would not lie  
23 against us.

24 Senator Thomas. Mr. Chairman?

25 The Chairman. Yes?

1           Senator Thomas. Mine is pretty much the same. We  
2 talked about some in Philadelphia and had both the House  
3 and Senate there. There are some people who want to put  
4 the whole energy bill on the highway bill, but most of us  
5 are opposed to that idea.

6           Also, we do not want to take pieces apart. So, I  
7 think the current situation is the House is likely to  
8 send us something on the spending in the energy bill, but  
9 not try to put it on this bill. Most of us agree with  
10 that.

11          Senator Bunning. Mr. Chairman?

12          The Chairman. I am going to call on Senator  
13 Santorum. Then I will get you, Senator Bunning.

14          Senator Bunning. All right.

15          Senator Santorum. Mr. Chairman, having listened to  
16 what Senator Nickles just said, it is a little different  
17 than what I had heard. Is Senator Nickles correct, that  
18 unlike the highway portion of this bill, the transit  
19 portion of this bill is not funded?

20          Senator Baucus. No, that is not right. It is  
21 funded.

22          Senator Santorum. It is funded at a level \$10  
23 billion below what the outlays are going to be.

24          The Chairman. It is funded for the obligation that  
25 this committee has for the trust fund, the trust fund for



1 transit. Beyond that, there is money spent on transit  
2 that this committee has no control over.

3 Senator Santorum. Yes, I understand that. But you  
4 are funding in excess of the trust fund for highways  
5 here. I mean, you are coming up with all sorts of money  
6 that is in excess of the Highway Trust Fund because you  
7 are making up the difference of what the committee wants  
8 to spend versus what the Highway Trust Fund produces.  
9 So, you are doing that for highways. You are not doing  
10 it for transit.

11 The Chairman. We are doing it for transit, the  
12 extent to which we have control over money that they use  
13 that this committee has jurisdiction over, and only to  
14 that extent.

15 Senator Santorum. Well, Mr. Chairman, with all due  
16 respect, I do not agree with you. What you are doing  
17 here, is, yes, you are funding the money out of the  
18 Highway Trust Fund that you have jurisdiction over, but  
19 you are coming up with a whole host of other, as Senator  
20 Kyl would suggest, gimmicks to come up with additional  
21 money that is needed to meet the highway obligations that  
22 the committee marked up to.

23 The Chairman. All right.

24 Senator Santorum. You have not done so in transit.  
25 You have left a hole in transit of at least \$10 billion.

1           The Chairman.    If you do not want to take my word  
2 for it, let the staff explain it to you.  Go ahead.

3           Mr. Prater.    Senator Santorum, we had extensive  
4 discussions with Banking Committee staff, both sides of  
5 the aisle, over the weekend and all last week.  Our  
6 understanding--and this conforms with the CBO estimate on  
7 the outlays for transit--is this is the number the  
8 transit gets on outlays.  We are doing the same thing for  
9 highways that we are doing for transit.

10          Senator Santorum.   She just said it was \$46 billion.

11          Ms. Levy.    I said that is a number that I saw.  They  
12 have not marked up.  I mean, I have seen a lot of  
13 numbers.

14          Ms. Mistr.   They have indicated to us that they need  
15 an additional \$4 billion in addition to the \$31.8 billion  
16 in gas tax receipts that they are going to get.  We  
17 assume that that is the outlays that are required to meet  
18 their obligation limits, but we do not actually know what  
19 their obligation limits are.

20          Senator Baucus.   I do not know if this helps or if  
21 it confuses, but historically --

22          Senator Santorum.   Well, I was happy because I  
23 thought everything was taken care of.  But when she says  
24 we are at \$46 billion and I see \$36 billion, that does  
25 not sound like we are taken care of.

1           Senator Baucus.   Well, it may not end up, frankly,  
2   in the end, being \$36 billion because historically, if  
3   transit --

4           Senator Santorum.   Spend-out takes longer.  I  
5   understand that.

6           Senator Baucus.   It has been that the trust fund  
7   generally accounts for 80 percent of the transit  
8   expenditures, whereas general revenue has historically  
9   been about 20 percent of transit expenditures.

10          So, there is a difference between general revenue  
11   being used for transit versus general revenue being used  
12   for highway funds.  Historically, there has been that  
13   80/20 ratio.  I know the transit people are going to be  
14   looking to the Appropriations Committee to come up with  
15   that additional 20 percent, and we are different.

16          Senator Santorum.   My concern is just that they are  
17   being treated fairly.  That is all I wanted to know.

18          The Chairman.   I have not forgotten Senator Bunning.  
19   On this point, I think I should call on Senator Daschle.

20          Senator Daschle.   Just on this point.  I came into  
21   the mark-up today being assured by staff that highways  
22   and transit were being treated equally.  Can you, once  
23   again, reassure us that that is the case?

24          Mr. Prater.   That is correct, Senator Daschle.  The  
25   outlays from the trust fund for highways are being

1 accounted for in this bill, the same for transit.

2 Senator Daschle. Thank you.

3 The Chairman. Senator Bunning?

4 Senator Bunning. Yes. On the energy portion and  
5 marking up or amending this bill on the floor to accept  
6 portions of the energy bill, I want to voice my opinion  
7 with Senator Nickles, that if we are going to pick off  
8 certain portions of the energy bill and try to put them  
9 on this bill, we are going to have one fight you have  
10 never seek the likes of on the floor of the U.S. Senate.

11 The Chairman. From what I know, I do not think you  
12 have to worry.

13 Senator Bunning. Well, thank you very much.

14 Senator Graham. Mr. Chairman?

15 The Chairman. Senator Graham?

16 Senator Graham. Could I ask another question on  
17 this transit issue? What percentage of the highway trust  
18 fund, over the life of T-21, has gone to highways and  
19 what percentage has gone to mass transit? Can I reframe  
20 that? Of the dollars which came in from the motor fuel  
21 tax, what percentage went to highways, what percentage  
22 went to transit?

23 Ms. Paris. If I could answer just from the  
24 straight, technical tax level, it is 2.86 cents of every  
25 gallon. Now, proportionately how that worked out, I will

1 let Ms. Levy answer that. But the code definition is  
2 2.86 cents of every gallon, so it can be volatile.

3 Senator Graham. But you cannot give me the answer  
4 of what the percentage that resulted in?

5 Ms. Levy. The percentage compared to highways or  
6 the percentage of the total transit program? I am not  
7 sure what you are asking.

8 Senator Graham. The percent of the amount of money  
9 that came from the federal motor fuels tax, which is  
10 approximately 18.4 cents a gallon. What percentage of  
11 that went to transit, what to highways?

12 Ms. Levy. Eleven percent went to transit, 89  
13 percent goes to highways.

14 Senator Graham. And is that same percentage  
15 maintained in the assumptions under this?

16 Ms. Levy. Oh, yes.

17 The Chairman. All right. Can we move ahead, then?

18 I need to have you explain what I told you to  
19 explain.

20 Ms. Paris. Yes, sir.

21 Senator Jeffords had previously filed an amendment  
22 which we accepted as part of the modification to the  
23 mark. I need for you to ask for unanimous consent on the  
24 approval of the modification to clarify that the highway  
25 use tax evasion projects would also be part of the

1 modification. It was left off of our modification.

2 The Chairman. Any objection to doing that?

3 [No response]

4 The Chairman. No objection.

5 Now, I ask that the Chairman's mark, as amended, be  
6 adopted. Those in favor, say aye.

7 [A chorus of ayes]

8 The Chairman. Those opposed, say no.

9 [A chorus of nays]

10 The Chairman. All right. The ayes do have it. The  
11 amendment is adopted.

12 Now, I ask that the committee favorably report the  
13 Highway Reauthorization and Excise Tax Simplification Act  
14 of 2004, as amended. I ask for the yeas and nays. Would  
15 the Clerk call the roll?

16 The Clerk. Mr. Hatch?

17 Senator Hatch. Aye.

18 The Clerk. Mr. Nickles?

19 Senator Nickles. No.

20 The Clerk. Mr. Lott?

21 The Chairman. Aye, by proxy.

22 The Clerk. Ms. Snowe?

23 Senator Snowe. Aye.

24 The Clerk. Mr. Kyl?

25 The Chairman. Can I interrupt? We have got one

1 more little bill that takes just a little while, so stay  
2 here, please.

3 What was the last name you called?

4 The Clerk. Mr. Kyl.

5 The Chairman. He would be no, by proxy.

6 The Clerk. Mr. Thomas?

7 Senator Thomas. Aye.

8 The Clerk. Mr. Santorum?

9 The Chairman. No, by proxy.

10 The Clerk. Mr. Frist?

11 The Chairman. Aye, by proxy.

12 The Clerk. Mr. Smith?

13 Senator Smith. Aye.

14 The Clerk. Mr. Bunning?

15 Senator Bunning. Aye.

16 The Clerk. Mr. Baucus?

17 Senator Baucus. Aye.

18 The Clerk. Mr. Rockefeller?

19 Senator Baucus. Aye, by proxy.

20 The Clerk. Mr. Daschle?

21 Senator Daschle. Aye.

22 The Clerk. Mr. Breaux?

23 Senator Breaux. Aye.

24 The Clerk. Mr. Conrad?

25 Senator Conrad. Aye.

1           The Clerk.    Mr. Graham?  
2           Senator Graham.   No.  
3           The Clerk.    Mr. Jeffords?  
4           Senator Jeffords.   Aye.  
5           The Clerk.    Mr. Bingaman?  
6           Senator Bingaman.   Aye.  
7           The Clerk.    Mr. Kerry?  
8           Senator Baucus.   Aye, by proxy.  
9           The Clerk.    Mrs. Lincoln?  
10          Senator Lincoln.   Aye.  
11          The Clerk.    Mr. Chairman?  
12          The Chairman.   Aye.  
13          The Clerk.    Mr. Chairman, the tally is 17 ayes, 4  
14          nays.  
15          The Chairman.   With a vote of 17 ayes, 4 nays, the  
16          bill is reported to the Senate. I ask that the staff  
17          have authority to draft necessary technical and  
18          conforming changes to the Chairman's mark.  
19          [No response]  
20          The Chairman.   Without objection, so ordered.  
21          I now would move to the third, and final, business.  
22          Senator Hatch.   Mr. Chairman? Just a short  
23          statement.  
24          The Chairman.   The Senator from Utah.  
25          Senator Hatch.   I have a longer statement I would



1 ask to be put in the record. But last year, Senator  
2 Lincoln and I made a pledge to try to bring significant  
3 simplification provisions.

4 I am pleased that you have included the definition of  
5 a child, that you have included the provisions to  
6 modernize the U.S. Tax Court, and other matters in this.  
7 I just want to thank you and congratulate you for it.

8 The Chairman. All right. I thank you for your  
9 statement.

10 [The prepared statement of Senator Hatch appears in  
11 the appendix.]

12 The Chairman. I would call the Chairman's mark for  
13 S. 882, the Tax Administration Good Government Act of  
14 2004. Since the Finance Committee members' staffs are  
15 familiar with this bill, we would forego the staff walk-  
16 through.

17 Are there any questions?

18 [No response]

19 The Chairman. If there are no further questions or  
20 comments, I would now ask that the Chairman's mark be  
21 adopted. Those in favor, say aye.

22 [A chorus of ayes]

23 The Chairman. Those opposed, say no.

24 [No response]

25 The Chairman. The ayes have it. The Chairman's

1 mark is adopted.

2 I now ask that the committee favorably report the Tax  
3 Administration Good Government Act of 2004, as amended.

4 I ask those in favor to say aye.

5 [A chorus of ayes]

6 The Chairman. Those opposed, say no.

7 [No response]

8 The Chairman. The yeas have it. The bill is  
9 reported. Make note that there was a quorum present. I  
10 ask that the staff have the authority to draft necessary  
11 technical and conforming changes to the Chairman's mark.

12 [No response]

13 The Chairman. Without objection, so ordered. I  
14 thank Senator Baucus for the cooperation of his  
15 leadership capacity to bring the bill this far, and in  
16 the bipartisan tradition of this committee. I thank all  
17 members for helping us.

18 Senator Graham. Mr. Chairman? Before you adjourn  
19 the meeting, could I make one comment?

20 The Chairman. The Chair recognizes the Senator from  
21 Florida. Would everybody give the Senator from Florida  
22 his attention?

23 Senator Graham. Mr. Chairman, like I think every  
24 member of this committee and every member of Congress, I  
25 am very concerned about the cost overrun in the

1 prescription drug bill that we have just reported out of  
2 this committee and passed by the full Congress and signed  
3 by the President.

4 I think, had there been an understanding that this  
5 bill would have cost \$535 billion instead of \$395  
6 billion, there would have been a lot of reconsideration.

7 The President, on Friday, asked the Congress to join  
8 him in the hard work that we will have to be certain that  
9 we undertake to set priorities that are fiscally  
10 responsible.

11 So, I would urge that we accept the challenge of the  
12 President and schedule at the earliest possible date a  
13 hearing on the prescription drug bill to try to  
14 understand what happened between November and January in  
15 terms of the cost estimate, and what, if any, actions we  
16 should be prepared to take in order to achieve the  
17 avoidance of the tremendous addition to the deficit that  
18 we are about to impose.

19 The Chairman. Yes. In answer to your question, I  
20 would take that in two steps. Number one, I am going to  
21 work with Senator Baucus because there probably would be  
22 reasons to have hearings. Then after the hearings, I  
23 would make a determination about steps to be taken.

24 But I would also say that, as far as the difference  
25 between the executive branch of government and the

1 Congressional Budget Office, that the Congressional  
2 Budget Office is still sticking by their estimate of what  
3 this cost would be of \$395 billion. They are defending  
4 it and they are obviously the ones we have to go by.

5 I would also say to the executive branch of  
6 government that now comes out with a higher figure, that  
7 they had an opportunity during the six months that we  
8 were working on the Medicare bill to meet and discuss  
9 with CBO what the costs might be, where there were  
10 differences in assumptions, and try to bring about some  
11 understanding of differences in these assumptions and  
12 guesstimates, and everything else, and the executive  
13 branch did not want to talk to CBO.

14 Senator Breaux?

15 Senator Breaux. I was just thinking, there were a  
16 lot of people that wanted us to spend about \$600, \$700,  
17 \$800 billion on Medicare prescription drugs, and with the  
18 new estimates, we may be getting close. [Laughter].

19 The Chairman. And without a vote of the people.  
20 But I still think that we need to look at these things,  
21 so the admonition by the Senator from Florida is well  
22 taken. I have not discussed this with the Senator from  
23 Montana, but as you know, that is my practice, and we  
24 will. Hopefully, we will move forward in a bipartisan  
25 way. Thank you.

1 Meeting adjourned.

2 [Whereupon, at 4:43 p.m. the meeting was concluded.]

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I N D E X

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Gilmour  
2-2-04  
126 pp.

Senator Grassley's Opening Statement before the Senate Committee on Finance  
Chairman's Mark Regarding the National Employee Savings and Trust Equity Guarantee Act  
and the Extension of Highway Trust Fund Provisions, and S. 882 the Tax Administration  
Good Government Act of 2004  
February 2, 2004

Thank you for joining us at today's markup on three items: the National Employee Savings and Trust Equity Guarantee Act, the Extension of the Highway Trust Fund Provisions, and the Tax Administration Good Government Act of 2004.

We have a lot to accomplish this afternoon so I do not want to take too much time. However, I would like to say a few words about the highway portion of the mark-up.

For two years, Senator Baucus and I have worked with the authorizing committees to prudently fund the highway and transit programs. It has not been an easy process, but we have found a way to fund the programs in a way that enables every State of the Union to bring home more money.

These additional dollars are critical for maintaining and creating our nation's transportation infrastructure. It also translates into more jobs, enhanced economic development for our cities and counties, safer highways, and less congestion.

The Chairman's mark includes my Volumetric Ethanol Excise Tax Credit (VEETC) provisions, which has previously been passed out of this Committee. VEETC ensures a portion of the much needed funding for our highway system, while preserving a critical incentive for renewable fuels.

In addition, the Chairman's mark includes my efforts to fight fuel tax fraud. I am not talking about just moving around a few numbers on a tax return. Today we will begin closing the loop-holes that have created billions of gallons of missing fuel and billions in missing tax dollars. This problem not only robs the U.S. Treasury, it also robs the taxpayer!



COLI, Highway, and Tax Administration  
Finance Committee Markup  
Statement of Senator Max Baucus  
Monday, February 2, 2004

**Thank you, Chairman Grassley.**

**We have before us today an important trio of bills, covering corporate-owned life insurance, highway financing, and tax administration. Our agenda today reflects the variety of issues that makes the Finance Committee the interesting place it is.**

**COLI**

**The first piece of business before the Committee involves Corporate Owned Life Insurance — or COLI. Based on a unanimous consent agreement that we reached last October, the Committee will reopen the pension bill — solely to address COLI and related provisions.**

**The Committee has wrestled with this issue for months. A great deal of discussion, analysis, and hard work has gone into finding an appropriate solution.**

**Members on both sides of the aisle have worked together. And the legislation that is before us today represents a bipartisan agreement among Members of the Committee.**

**The legislation before us makes COLI payments subject to taxation, unless a few key exceptions are met.**

- **If the individual covered by the insurance policy worked for the company during the year preceding the individual's death, then the insurance policy's payments are not subject to tax.**

- **If the company uses the insurance policy's payments to purchase the company shares of the deceased individual, then they are not subject to tax.**
- **If the death benefits go the employee's family or estate, then they are not taxed.**
- **And if the employee was a director or a highly-compensated individual, then the payments are not subject to tax.**

**But more importantly, the legislation ensures that if a company plans to purchase a policy on an employee's life, then the company has to notify the employee.**

**And the employee has the opportunity to say “No, I don’t want you to buy that policy.” If the employee doesn’t consent, then the proceeds will not be tax-free.**

**This bill also includes a requirement that a company report annually the number of employees insured under these policies, and the total face amount of those policies. At the hearing in October, we heard that information was not available on the amount of COLI that is in force. This bill addresses that information deficit.**

**I believe that this bill is the right answer to the questions that we have faced on COLI. And I want to thank all my Colleagues who have put so much time and effort into getting us to where we are today.**

**Now, I know that there are some differences of opinion among the Members of this Committee. Nonetheless, Members have shown a great deal of cooperation to get to this point. I especially want to thank Chairman Grassley, Senator Bingaman, and Senator Conrad.**

**I am pleased that we will get this section of the pension bill worked out today so that we can move on and report the bill. The pension bill will provide some very important participant protections. We need to get it moving.**

### **Highways**

**The second item on our agenda today is the revenue title of the highway bill. But this is more than just a highway bill. It's a jobs bill.**

**The Finance Committee has the honor of having jurisdiction over the Highway Trust Fund. Our responsibilities are threefold: First, we authorize the taxes that makeup the balance of the Trust Fund. Second, we extend taxes payable to the Trust Fund. And third, we determine how money can be spent from the Trust Fund.**

**But it is not just the jurisdiction of this Committee to fund the highway reauthorization, it's also our responsibility. With a stagnant economy and high unemployment rates, one would be hard pressed to find another single piece of legislation that will help as much as the highway bill.**

**For every billion dollars spent on highways, 48,500 jobs are created. That is what this bill is about. And, to me, that is why it is so important.**

**I have worked on transportation issues for a long time. As the senior Democrat on the Senate Environment and Public Works Committee, I played a central role on both ISTEA and TEA-21.**

**TEA-21 accounted for 11,000 good-paying jobs in my state of Montana. And highway dollars have a ripple effect in the economy – creating jobs for everyone from highway construction crews, to sand and gravel distributors, to contractors, and down the line. And these jobs provide valuable new opportunities when manufacturing jobs are disappearing.**

**In my state of Montana, the highway program is a jobs program. I know this is true for many members of this Committee – Iowa, Wyoming, Utah, and Arkansas, North and South Dakota, and others. Rural states rely on the highway program to create and sustain jobs in their states. But all**

**states need highway money for their economy and their way of life.**

**TEA-21 passed overwhelmingly in 1995 because it provided, on average, a 40 percent increase in funding. In addition to the 4.3-cent gas tax that was transferred to the Trust Fund from the general fund, that 40 percent increase was primarily derived by the new budgetary treatment for highways and the “protected” status of the Highway Trust Fund. It is crucial to this program to maintain those budgetary firewalls.**

**So TEA-21 reauthorization really comes down to this: In order to pass a bill, we will need more money. That’s where the Committee comes in.**

**In addition to the expected gas tax receipts, we have looked for additional revenue.**



**We will be making the changes to ethanol taxation that I proposed over 3 years ago. This Committee has passed these changes twice already, in what we call the VEETC (VEE-TECH) bill. These changes have passed the Senate. Both Leader Frist and Speaker Hastert have assured me that those changes will be enacted this time.**

**Those changes remove the burden of the ethanol subsidy from the Highway Trust Fund. The subsidy is a good idea. It is good agriculture policy and good energy policy. But as a matter of highway policy, the roads receive the same wear and tear from vehicles regardless of the fuel they use. So it should not be the Highway Trust Fund that loses revenue.**

**By the same token, there are several subsidies from the federal gas tax that certain groups receive that are not**

**connected to highway policy. These subsidies are received as refunds from the general fund.**

**The problem is that the general fund gets reimbursed by the Highway Trust Fund. Why?**

**With all the talk about the general fund transferring money to the Trust Fund, the real truth is that the Trust Fund actually transfers money to the general fund. It is time to set the accounts straight.**

**I don't oppose these subsidies. But I don't believe that our highway dollars should pay for them. The mark today contains proposals that will remove the burden of these exemptions from the Highway Trust Fund.**

**Also in this bill, we are dealing with the issue of fuel tax evasion and how to prevent it. Senator Grassley and I**

**introduced a bill that would close a lot of loopholes in the tax code and catch some of the bad guys, the ones who are dishonest and defrauding the federal government.**

**We are also proposing the continuation of current law regarding the Mass Transit Account of the Highway Trust Fund. That means that the Mass Transit Account will continue to receive 2.86 cents from every gallon of fuel taxed — even the new gallons that we recouping. This mark funds transit at a level directly related to the receipts it receives under current law.**

**And today we are also marking up excise tax reform legislation. This Committee has considered these provisions on several occasions. This package repeals the Civil War-era occupational tax on establishments that sell alcoholic beverages. And it makes several improvements to the excise**

taxes paid on sporting equipment. I am pleased that the Chairman has included these items in his mark.

### **Tax Administration**

The third bill that we will address today is the Tax Administration Good Government bill.

Mr. Chairman, more than 5 years ago, Congress passed legislation to reform the Internal Revenue Service. To date, significant progress has been made to implement that legislation and to improve the quality of service to taxpayers. But much work remains to be done.

This afternoon, the Committee will consider a package of good government proposals to further improve the operations of the IRS and strengthen taxpayer protections. The Chairman's mark will afford taxpayers additional

**safeguards in their dealings with the IRS, improve tax administration, reform the interest and penalty regimes, modernize the U.S. Tax Court, and simplify our tax laws.**

**Congress's responsibility for the tax system, however, does not stop after we pass tax laws. We have a responsibility for oversight to ensure that taxpayer rights are protected and that our laws are administered according to congressional intent.**

**The mark builds on S. 882, the Tax Administration and Good Government Act, which Chairman Grassley and I introduced last April. Since that time, we have worked closely with taxpayer groups, practitioners, the administration, the Internal Revenue Service, the National Taxpayer Advocate, and the Joint Committee on Taxation to develop additional provisions. We have also consulted**

**closely with members of this Committee to incorporate their ideas. The Chairman's mark reflects these efforts.**

**This is a good, balanced, and important package of good government reforms that won't attract a lot of headlines, but will help a large number of taxpayers. I want to thank the Chairman for including this package as part of today's markup.**

**And so, Mr. Chairman, I support these three bills before the Committee today, and urge that we report them favorably.**

*Jim Bunning*  
2/2/04

**Opening Statement**  
**Senator Bunning**  
**Committee on Finance - Business Meeting**  
**February 2, 2004**

MR. CHAIRMAN,

I LOOK FORWARD TO TAKING UP THE BUSINESS BEFORE THE COMMITTEE TODAY. WE ARE EXAMINING A NUMBER OF IMPORTANT ISSUES, INCLUDING REAUTHORIZATION OF THE HIGHWAY BILL, CORPORATE-OWNED LIFE INSURANCE, TAXPAYER PROTECTIONS, AND EXCISE TAX REFORMS.

IN PARTICULAR, I WOULD LIKE TO THANK THE  
CHAIRMAN, AND MY FRIENDS SENATORS BAUCUS,  
CONRAD, BINGAMAN AND ALL WHO WORKED SO  
HARD ON THE C.O.L.I. ISSUE.

OUR AGREEMENT TODAY WOULD ENSURE  
THAT COMPANIES WOULD BE ABLE TO FUND  
BENEFIT PROGRAMS THROUGH C.O.L.I. POLICIES.

IT IS IMPORTANT THAT WE DON'T DO  
ANYTHING THAT MIGHT TAKE AWAY BENEFITS  
FROM OUR WORKERS.



WITHOUT THE TAX TREATMENT OF THE  
C.O.L.I.'S, MANY WORKERS WOULD EITHER HAVE  
TO PAY MORE FOR THEIR BENEFITS OR WOULD  
NOT BE ABLE TO GET THE BENEFITS THEY  
CURRENTLY RECEIVE.

WE HAVE WORKED LONG AND HARD ON THIS  
ISSUE, AND I KNOW SENATOR BINGAMAN IS NOT  
ENTIRELY SATISFIED AND MAY OFFER SOME MORE  
CHANGES TO WHAT WE HAVE WORKED OUT. BUT I  
THINK WE HAVE COME UP WITH A VERY GOOD  
COMPROMISE THAT ADDRESSES MANY OF  
SENATOR BINGAMAN'S AND OTHERS' CONCERNS.

I STRONGLY SUPPORT THE CHAIRMAN'S  
AMENDMENT AND WOULD HOPE MY COLLEAGUES  
DO AS WELL.

I ALSO WANT TO COMMEND THE CHAIRMAN  
AND RANKING MEMBER FOR THE IMPORTANT  
WORK THEY HAVE DONE TO INCREASE TAXPAYER  
PROTECTIONS AND TO ADDRESS MUCH NEEDED  
SIMPLIFICATION IN THE EXCISE TAX AREA – AN  
AREA THAT IS OFTEN OVERLOOKED BUT THAT  
CAN HAVE IMPORTANT CONSEQUENCES ON  
TAXPAYERS.

I NOTICED THAT A PROVISION THAT THIS COMMITTEE HAS SEEN BEFORE IS INCLUDED IN THE CHAIRMAN'S MARK OF BOTH THE TAX ADMINISTRATION GOOD GOVERNMENT ACT AND THE HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION ACT BEFORE US TODAY. THAT PROVISION IS ONE THAT ADDRESSES THE DEDUCTIBILITY OF FINES AND PENALTIES RELATED TO SETTLEMENTS.

WHILE THE INTENT OF THE PROPOSAL IS APPROPRIATE, I ENCOURAGE THE COMMITTEE TO CONTINUE TO EXAMINE IT TO ENSURE THAT THE PROPOSAL WILL NOT HAVE ANY UNINTENDED CONSEQUENCES THAT WOULD DISCOURAGE SETTLEMENTS, SUCH AS THOSE THAT INVOLVE ENVIRONMENTALLY BENEFICIAL IMPROVEMENTS, THAT MAY HAVE A POSITIVE IMPACT ON THE COMMUNITY.

FINALLY, I JUST WANT TO SAY A FEW WORDS  
ABOUT THE HIGHWAY REAUTHORIZATION BILL.  
LAST FALL I MADE IT CLEAR THAT I WAS OPPOSED  
TO A SHORT-TERM REAUTHORIZATION BECAUSE  
OF THE EFFECT IT WOULD HAVE ON STATE  
TRANSPORTATION AND BUDGET PLANNING. I AM  
GLAD WE ARE FINALLY ADDRESSING A SIX-YEAR  
BILL IN THIS COMMITTEE AND ON THE SENATE  
FLOOR.

OUR TRANSPORTATION INFRASTRUCTURE HAS ALWAYS BEEN ONE OF THE BACKBONES OF OUR NATION'S ECONOMIC MIGHT AND IT IS IMPORTANT THAT WE KEEP OUR ECONOMY GROWING.

TRANSPORTATION JOBS ARE HIGH-PAYING JOBS FOR HARD-WORKING AMERICANS AND WE MUST MAKE SURE OUR TRANSPORTATION SYSTEM IS AS SAFE AND EFFICIENT AS IT CAN BE. FEDERAL HIGHWAY PROGRAMS HAVE ALSO ALLOWED US TO TACKLE PROJECTS NO STATE COULD HANDLE ALONE, PROJECTS LIKE REPLACEMENT OF THE BRENT SPENCE BRIDGE THAT CARRIES I-71 AND I-75 FROM OHIO TO KENTUCKY ACROSS THE OHIO RIVER.

IN ADDITION, FEDERAL TRANSIT PROGRAMS  
HAVE ALLOWED SMALL AND RURAL  
COMMUNITIES TO RUN BUS AND VAN SERVICES TO  
HELP OUR ELDERLY, DISABLED, AND LOW INCOME  
FOLKS GET WHERE THEY NEED TO BE SAFELY.

I LOOK FORWARD TO A PRODUCTIVE MORNING  
AND I THANK THE CHAIR.

Bob-

Below is a statement for the record from today's markup. Thanks. Adam

FOR INSERTION IN THE COMMITTEE RECORD:

MR BUNNING

I commend you on your efforts to help improve our nation's highway system and for including in this Mark the much need excise tax reform package that we have worked together on for some time now. I also commend and thank the Chairman and Ranking Member for proposing to codify all three of the current Administrative exceptions to the definition of a highway vehicle. This is an important step toward providing some much needed certainty for taxpayers in this area.

As you are certainly aware, the IRS, in June 2002, with little notice, proposed dramatic changes to the exceptions regarding what constitutes a highway vehicle, including a full repeal of the mobile machinery exemption. I appreciate your willingness, along with Senator Baucus, to ask the IRS to postpone finalizing these regulations until the Committee on Finance and Congress had an opportunity to further consider the issue during reauthorization of the highway bill.

I would, however, like to share a concern regarding the mobile machinery proposal. Codification of the current law mobile machinery exemption does not address some of the ambiguities that exist in the current regulatory definition. I am concerned that failing to address some of these ambiguities will result in continued uncertainty in interpretation of the exception.

Will the Chairman agree to work with me on evaluating whether any of these ambiguities may reasonably be addressed as the highway reauthorization bill moves to the Floor?

MR. GRASSLEY

Yes, the Committee will work with you and continue to consider the best manner for addressing the concern you raise as the bill moves forward in the legislative process.