

revenue bonds that were issued for the construction of solid waste management facilities to which the political subdivision's waste was designated.

**"(f) RETAINED AUTHORITY.—**

"(I) REQUEST.—On the request of a generator of municipal solid waste affected by this section, a State or political subdivision may authorize the diversion of all or a portion of the solid waste generated by the generator making the request to an alternative solid waste treatment or disposal facility, if the purpose of the request is to provide a higher level of protection for human health and the environment or reduce potential future liability of the generator under Federal or State law for the management of such waste, unless the State or political subdivision determines that the facility to which the municipal solid waste is proposed to be diverted does not provide a higher level of protection for human health and the environment or does not reduce the potential future liability of the generator under Federal or State law for the management of such waste.

"(2) CONTENTS.—A request under paragraph (I) shall include information on the environmental suitability of the proposed alternative treatment or disposal facility and method, compared to that of the designated facility and method.

"(g) LIMITATIONS ON REVENUE.—A State or political subdivision may exercise flow control authority under subsection (b), (c), or (d) only if the State or political subdivision certifies that the use of any of its revenues derived from the exercise of that authority will be used for solid waste management services.

"(h) REASONABLE REGULATION OF COMMERCE.—A law, ordinance, regulation, or other legally binding provision or official act of a State or political subdivision, as described in subsection (b), (c), or (d), that implements flow control authority in compliance with this section shall be considered to be a reasonable regulation of commerce retroactive to its date of enactment or effective date and shall not be considered to be an undue burden on or otherwise considered as impairing, restraining, or discriminating against interstate commerce.

**"(i) EFFECT ON EXISTING LAWS AND CONTRACTS.—**

"(I) ENVIRONMENTAL LAWS.—Nothing in this section shall be construed to have any effect on any other law relating to the protection of human health and the environment or the management of municipal solid waste or recyclable material.

"(2) STATE LAW.—Nothing in this section shall be construed to authorize a political subdivision of a State to exercise the flow control authority granted by this section in a manner that is inconsistent with State law.

**"(3) OWNERSHIP OF RECYCLABLE MATERIAL.—**Nothing in this section—

"(A) authorizes a State or political subdivision of a State to require a generator or owner of recyclable material to transfer recyclable material to the State or political subdivision;

"(B) prohibits a generator or owner of recyclable material from selling, purchasing, accepting, conveying, or transporting recyclable material for the purpose of transformation or remanufacture into usable or marketable material, unless the generator or owner voluntarily made the recyclable material available to the State or political subdivision and relinquished any right to, or ownership of, the recyclable material.

"(j) REPEAL.—(I) Notwithstanding any provision of this title, authority to flow control by directing municipal solid waste or recyclable materials to a waste management facility shall terminate on the date that is 30

years after the date of enactment of this Act.

"(2) This section and the item relating to this section in the table of contents for subtitle D of the Solid Waste Disposal Act are repealed effective as of the date that is 30 years after the date of enactment of this Act."

**SEC. 203. TABLE OF CONTENTS AMENDMENT.**

The table of contents for subtitle D in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901), as amended by section 101(b), is amended by adding after the item relating to section 4011 the following new item:

"Sec. 4012. State and local government control of movement of municipal solid waste and recyclable material."

**TITLE III—GROUND WATER MONITORING**

**SEC. 301. GROUND WATER MONITORING.**

**(a) AMENDMENT OF SOLID WASTE DISPOSAL ACT.—**Section 4010(c) of the Solid Waste Disposal Act (42 U.S.C. 6949a(c)) is amended—

(1) by striking "CRITERIA.—Not later" and inserting the following: "CRITERIA.—

"(1) IN GENERAL.—Not later"; and

(2) by adding at the end the following new paragraph:

"(2) ADDITIONAL REVISIONS.—Subject to paragraph (2), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

"(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

"(B) the municipal solid waste landfill unit or expansion serves—

"(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

"(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

"(3) PROTECTION OF GROUND WATER RESOURCES.—

"(A) MONITORING REQUIREMENT.—A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

"(B) METHODS.—If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

"(C) CORRECTIVE ACTION.—If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

"(4) REMOTE ALASKA NATIVE VILLAGES.—Upon certification by the Governor of the State of Alaska that application of the requirements of the criteria described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) would be infeasible, would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the unit shall be exempt from those requirements."

**(b) REINSTATEMENT OF REGULATORY EXEMPTION.—**It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act, as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991.

Mr. DOLE. Mr. President, I understand the distinguished Democratic leader wants to speak for a few moments on product liability, and so he will be here momentarily. But I would say, as we start S. 534, keep in mind it came out of the committee by a vote of 16 to 0. And I hope this is something we can complete before the week is out, sometime by late Friday afternoon. I know there are amendments. We can dispose of amendments. But I hope that in many cases the amendments can be resolved by agreement, by working them out. And I know we have reasonable managers on both sides of the aisle.

This is important legislation, and I am happy to have it before the Senate. I hope we can complete action on it before the week is out because next week we will go to the budget and, hopefully, following that to telecommunications. So we have our next 2 or 3 weeks laid out for us before a very brief Memorial Day recess.

I will also be sending a letter to Senator DASCHLE today with reference to the August recess, and unless we can reach some accommodation, I then will announce in the next week whether or not there will be an August recess and, if so, the length of that recess.

Mr. CHAFEE. I wonder if the leader would yield to a question.

I heard the ominous words "a very brief Memorial Day recess." What does that mean?

Mr. DOLE. It is a week.

Mr. CHAFEE. That is fine.

Mr. DOLE. It may be longer than the August recess.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

**THE PRODUCT LIABILITY BILL**

Mr. DASCHLE. Mr. President, I want to commend so many Senators on both sides of the aisle for their efforts over the last couple of weeks on product liability. This has been a vigorous debate, and a debate that obviously has required a good deal of compromise and concession on both sides.

I believe there was another opportunity that we could have had to reach greater consensus on the bill, and I am sorry we missed that opportunity in the final days of this debate.

But I do believe that as a result of the decisions made by this body over

the last couple of weeks, the message ought to be very clear. The message is this: Members of the Senate are not willing to accept the extreme measures that have been proposed by the House. If those more extreme measures are added to the bill in conference, it is very unlikely that anything will ultimately pass.

It is critical, as we look to the conference report, that we keep this bill modest, that we not load it up with expansionist amendments, that we seek to ensure that what has been passed is all that comes back to the Senate.

I will say unequivocally that I believe this legislation will again be in trouble if it comes back vastly different from what it is right now. Many of us felt very strongly we could have improved upon this bill, especially with regard to punitive limits and with regard to the limitations on joint and several liability. For many of us who opposed the bill, there were provisions that we supported and would have liked to have been able to vote for, but, unfortunately, we could not resolve the issues that, in our view, were still too onerous to support.

But let me say, in spite of the fact that there was a very strong vote, that vote is directly dependent upon the degree to which the more extreme measures that were initially added are kept off the bill. We do not want to see them when this comes back. We will continue to fight this in a consequential way if they do come back, and I hope that that message was loud and clear.

I was very pleased with the comments made by both Senators ROCKEFELLER and GORTON yesterday as they commented about what they expect to see in conference. Senator GORTON said that he does not think there is one semicolon that is negotiable, and I think that is an accurate reflection of where the Senate stands.

So, indeed, we passed a piece of legislation today that may reflect the views of three-fifths of the Senate, but I think that it is a very tenuous victory, depending upon what may or may not occur in the conference report. So we look to that at some point in the future. But I must say that while those on both sides of the aisle who supported the legislation can claim victory, I think it is also important that they appreciate how tenuous that victory is and how important it is that we come back to the floor with something meaningful, something narrow and focused, and something that directly addresses the concerns raised on this floor for the last 2 weeks.

With that, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

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#### SIXTY VOTES NEEDED ON CONTROVERSIAL ISSUES

Mr. CHAFEE. Mr. President, I would also say to the distinguished Democratic leader, it appears around here if

there is anything controversial now, you need 60 votes to get it passed. Not a 51 vote margin, 51 to 49, it has to be 60 votes if the legislation is controversial; something new in the life of the Senate, but not entirely new, I will say that.

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#### INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

Mr. CHAFEE. Mr. President, I call up S. 534.

The PRESIDING OFFICER. It is the pending business.

Mr. CHAFEE. Mr. President, I join with the Senator from New Hampshire, Senator SMITH, in presenting S. 534 to the Senate. This is legislation dealing with interstate waste and flow control authority.

I want to acknowledge Senator SMITH's efforts as chairman of the Environment and Public Works Committee's Subcommittee on Superfund, Waste Control, and Risk Assessment. Senator SMITH has taken the lead in drafting this legislation, targeting issues that went unresolved last year.

I also want to acknowledge the work of the distinguished ranking member of our committee, Senator BAUCUS, for his help in the framing of this legislation which we will now be discussing over the next day or so.

Mr. President, this legislation is straightforward and attempts to deal with the issues of interstate waste and flow control, balancing the interests of the States that import waste, trash that comes into States for disposal, and the exporters, States that do not have landfills or incinerators and thus ship it out. We try to deal with communities with outstanding revenue bonds as they deal with the issues of construction of waste facilities the local individual who dispose of his or her garbage.

This bill includes three titles. Title I deals with interstate waste and is similar to the bill approved by the Senate last year. I would like to stress that. The interstate waste portion is one that was approved unanimously by this Senate last year.

Title II focuses on flow control, which we will discuss in a few minutes. And title III reinstates the ground water monitoring exemption for small landfills in the municipal solid waste landfill criteria.

Let me turn to title I. This is a very contentious area. Indeed, I guess we have dealt with this, on and off, over the past 5 years. And no one has been more ardent in trying to get this problem solved than the distinguished Senator from Indiana, Senator COATS.

Now, on interstate shipments, the bill before us, as I say, is similar to S. 2345, which was approved unanimously last year by the Senate.

I want to make it clear that the bill before us deals exclusively with the transport, across State borders, of mu-

nicipal solid waste. That is what we are talking about. We are not talking about restrictions on hazardous waste or industrial waste or even construction and demolition debris. Those items involve an entirely different set of problems and would require different approaches than we are dealing with here.

We are dealing here with municipal solid waste, sometimes referred to as MSW; what the rest of us, in layman's terms, would call garbage or trash.

Specifically the bill provides the following. There is an import ban. A Governor may, if requested by the affected local community, as designated by the Governor, ban out-of-State municipal solid waste at landfills or incinerators that did not receive out-of-State waste in 1993.

Now, this gets a little bit complicated, but these are provisions that we have worked out with Governors and municipalities, particularly the ones that cross borders.

So the first point is there can be an import ban that the Governor can impose, if he is requested by a local community and if that community did not receive out-of-State waste in 1993. Or he can impose this same ban at those facilities that received municipal solid waste in 1993 but are not in compliance with applicable Federal or State standards. So there is a power in the Governor. Now that is an import ban.

Further, a Governor may unilaterally freeze out-of-State waste at 1993 levels at landfills and incinerators that received waste during 1993 and are in compliance. In other words, the Governor can put a clamp on limiting it to the amount that came in in 1993, at those levels.

Now, there is an export ratchet, likewise. A Governor may unilaterally ban out-of-State waste from any State exporting more than 3.5 million tons in 1996. This declines to 3 million tons in 1997 and 1998, drops to 2.5 million tons in 1999 and the year 2000, 1.5 million tons in the year 2001 and 2002, and 1 million tons in 2003 and every year thereafter. So the Governor has this power to ban out-of-State waste coming from a State that is exporting very substantial amounts. That is the power in the importing State Governor.

There is also another ratchet. A Governor may unilaterally restrict out-of-State waste imported from any one State in excess of certain levels.

There is a cost recovery surcharge provision. States that imposed a differential fee on the disposal of out-of-State waste on or before April 3, 1994, are allowed to impose a fee of no more than \$1 per ton.

So there is that \$1-per-ton limitation, a differential that a State can impose, as long as the differential fee is used to fund solid waste management programs.

What we are dealing with all through here are the limitations that are imposed by the commerce clause of our Constitution. The bill we are dealing